



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.803 of 2020

National Insurance Co. Ltd.,
C-32. Second Avenue,
Vijay Plaza, II Floor,
Anna Nagar, Chennai-40.

... Appellant

Vs

1.Chellam

2. Ganesh Kuttralam

3. Mahesh Thirvayam

4. G.Venkataraju

... Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 01.06.2018 in MCOP No.548 of 2008 passed by the Motor Accidents Claims Tribunal/Special Sub-Judge-I, Small Causes Court, Chennai.

For appellant : Mrs.M.Srividhya

For respondent : Mr.Nedunchezhiyan RR1 to 3

R4 – No appearance

J U D G M E N T

This appeal has been filed by the appellant/insurance company on the



No.548 of 2008 passed by the Motor Accidents Claims Tribunal/Special Sub-Judge-I, Small Causes Court, Chennai.

2. It is the case of the appellant that on 28.06.2007 at about 15.302 hours while the deceased was riding his motor cycle bearing Reg. No.TN 20 AV 2585 at Kamarajar Salai opposite to Futura Polymer Ltd., Chennai proceedings from east to west at that time a lorry bearing Reg. No.TN 09 AH 7494 owned by the 4th respondent and insured with the appellant, driven by its driver, had colluded with the motor cycle resulted in the rider of the motor cycle sustained fatal injuries and died. Thereafter, the dependents of the deceased claimed filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/-

3. In order to prove the claim, the claimants have examined two witnesses viz., P.W.1 and P.W.2 and marked 13 documents viz., Ex.P1 to Ex.P13. On the side of the insurance company, three witnesses were examined and six documents were adduced. After analyzing the evidences, the Tribunal has awarded a sum of Rs. 8,02,600/- as compensation.

4. Challenging the quantum of compensation awarded by the

Tribunal, the appellant/Insurance Company has come forward with this



appeal before this Court.

WEB COPY

5. The learned counsel for the appellant submitted that the Tribunal failed to consider the evidences and erroneously awarded the compensation to the claimants. The accident was caused only due to the negligence on the part of the deceased as he was riding his motor cycle without following the traffic rules. At the time of accident, the driver of the lorry was not having a proper endorsement driving license. The insured lorry fallen under the contingent of Tanker lorry on that kind of the vehicle the driver must have the endorsement of Hazardious Goods endorsement. The Tribunal failed to consider the driving license of the deceased/Ex.R3, fastened the liability as against the appellant. Therefore, this Court may set aside the award and allow the appeal.

6. Per contra, the learned counsel appearing for the claimants submitted that due to the accident, the first respondent died. After analyzing the deposition and documents, the Tribunal has rightly awarded compensation, which is just and reasonable and the same needs no interference.

7. Heard the learned counsel for the appellant as well as the



respondents and also perused the materials available on record before this Court.

8. The factum of the case are not in dispute. The manner of the accident is also not in dispute. The appellant has filed the present appeal only on the ground that pay and recovery was not ordered. The only argument advanced by counsel for the appellant is that in view of proviso to [Section 14](#) of the Motor Vehicles Act, 1988, the driver who was driving the lorry vehicle was not in possession of a valid driving license. According to him in order to drive transport vehicle carrying goods of dangerous or hazardous nature, the validity period of driving license is one year and its renewal would be only in the event driver undergoes one day refresher course of the prescribed syllabus. Further there has to be endorsement on license authorizing to drive vehicle carrying dangerous or hazardous goods.

9. In order to appreciate the arguments [Section 14](#) of the Act, 1988 is reproduced hereunder:

"14. Currency of licenses to drive motor vehicles- (1) A learner's license issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the license.



Provided that in the case of license to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

10. Since Rule 9 of the Rules, 1989 provides *for other qualification which a driver must possess and Sub-Rule 3 provides for endorsement on license authorizing driver to drive vehicle carrying dangerous and hazardous goods, it is also necessary to read the same together with [Section 14](#) of the Act, 1988.*

11. In the present case, the driver of the lorry has not possessed the valid driving license at the time of the accident and the 4th respondent, who is the owner of the lorry, should not allow the driver to drive the vehicle without having proper endorsed driving license. Without considering the same, the Tribunal has fixed entire liability as against the insurance company, which is un-sustainable and non-est in law.

12. Considering the facts and circumstances of the case, this court is inclined to modify the award as follows:

(i) The quantum of compensation awarded by the Tribunal

is confirmed;



WEB COPY

(ii) *the appellant is directed to deposit the compensation in the credit of the MCOP before the Tribunal as awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order.*

(iii) *Therefore, the Insurance Company shall recover the award amount along with interest from the 4th respondent, who is the owner of the lorry;*

(iv) *On such deposit being made, the Tribunal is directed to transfer the amount as per the permissible apportionment to the bank account of the claimants through RTGS within a period of two weeks thereafter.*

13. With the above directions, the appeal is partly allowed. No costs.

13.12.2023

Index : Yes/no
Internet : Yes/no

To

The Motor Accidents Claims Tribunal/Sub Court,
Cheyyar, Thiruvannamalai District.



WEB COPY





WEB COPY



8

M.DHANDAPANI.,J.

ri

C.M.A.No.803 of 2020

13.12.2023