



C.M.A(MD)No.87 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2023

Pronounced On : 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.87 of 2019

P.Rajasekharan : Appellant / Respondent No.1

Vs.

1.S.Ponnammal

2.I.Manikandan

3.Reliance General Insurance Company Limited,
Thaha Plaza,
South Bye Pass Road,
Vannarpettai,
Tirunelveli.

: Respondents /
Petitioners 1 & 2 and Respondent No.2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decreetal order dated 28.09.2018 of the learned Chief Judicial Magistrate, Kanyakumari-cum-Motor Accidents Claims Tribunal, Nagercoil, in M.C.O.P.No.51 of 2015, on his file, insofar as the same are against the appellant, dismissing the said M.C.O.P as against the appellant.



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For Appellant : Mr.K.N.Thampi

For Respondents : Mr.S.J.Chakkaravarthy
1 and 2

: Mr.V.Sakthivel (for R3)

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.51 of 2015, dated 28.09.2018 on the file of the Chief Judicial Magistrate, Kanyakumari-cum-Motor Accidents Claims Tribunal, Nagercoil,.

2.The Appellant/first respondent, who was made liable to pay compensation of Rs.5,45,000/- with interest at 7.5% per annum to the respondents 1 and 2/claimants for the death of Iyyappan consequent to an accident occurred on 15.12.2013, challenged the liability mulcted on it by invoking the doctrine of pay and recovery and also challenged the quantum of compensation awarded at, by the Tribunal.



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For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the Tribunal.

3.The case of the claimants is that on 15.12.2013 at about 10.30 a.m, the first respondent was proceeding in a Mahindra Duro two wheeler bearing registration No.TN-75-P-5216 with the deceased Ayyappan as pillion rider in Thickenamcode-Colachel road, that when the first respondent was travelling in between Thickenamcode and Colachel road, near Baskara Pillai's house, Sasthankarai he drove the vehicle in a rash and negligent manner and as a result of which, the said Ayyappan fell down from the bike and sustained serious injuries; that immediately, he was taken to Colachel Government Hospital and thereafter, to the Asaripallam hospital and that subsequently, he succumbed to the injuries on 16.12.2013 and that the accident was occurred only due to the rash and negligent driving of the first respondent. It is the further case of the claimants that the deceased was aged about 56 years at the time of accident, that he was very hale and healthy and that he was doing coolie work and was earning Rs.15,000/- per month.



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4.The defence of the first respondent is that on 15.12.2013 at about 10.30 a.m, when the first defendant was proceeding in his two wheeler from Pathara Siva temple and on the way in front of the Government Primary School, the deceased who is the neighbour of the first respondent stopped the two wheeler and requested him to drop him at the Government Hospital, Colachel, that the first respondent had taken the deceased as a pillion rider, that while they were proceeding in front of the Baskara Pillai's House, he fell down and sustained serious injuries, that the first respondent had driven the two wheeler with care and caution and that the accident was occurred only due to the negligence of the deceased and the first respondent was not at fault.

5.The defence of the second respondent is that the vehicle in question was not insured at the time of the alleged accident, that the driver of the vehicle was not having a valid driving license at the time of accident and that the deceased by not wearing the helmet has contributed to the accident.



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6. During trial, the claimants have examined the first claimant Ponnammal as P.W.1 and one Archangel Francis as P.W.2 and exhibited 10 documents as Ex.P.1 to Ex.P.10. The first respondent has examined himself as R.W.1 and exhibited copy of his license as Ex.R.1. The second respondent has examined their Manager (Legal) as R.W.2 and the staff attached to the Regional Transport Officer, Marthandam as R.W.3 and exhibited three documents as Ex.R2 to Ex.R4.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing arguments of both sides, has passed the impugned award dated 28.09.2018 holding that the accident had occurred only due to the rash and negligence driving of the first respondent, directed the second respondent to pay compensation of Rs.5,45,000/- with interest and costs and permitted the second respondent to recover the same from the first respondent/owner of the vehicle. Aggrieved by the impugned award, the first respondent/owner of the vehicle has preferred this present appeal.



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8.The learned counsel appearing for the appellant would submit that the accident was occurred only due to the carelessness and negligence of the deceased, that the Tribunal ought to have dismissed the claim petition as the accident has not been proved to have been caused by the fault of the appellant, that the evidence of P.W.2 was tutored and an untrue witness, that the Tribunal has committed a mistake in applying the principle of pay and recovery, that the second respondent insurer has not pleaded and established the necessary ingredients and materials for the application of the principle of pay and recovery, and that the Tribunal ought to have dismissed the claim petition as the deceased was a gratuitous passenger. The learned counsel would further submit that the deceased was aged about 60 years at the time of accident, that he could not do any work at that time, that the amount awarded under various heads are high and without any basis and therefore, the impugned award for Rs.5,45,000/- is liable to be interfered with.

9.The points that arise for consideration are:

(i)Whether the Tribunal erred in deciding that the accident had occurred only due to the rash and negligence driving of the first



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respondent and the consequent liability mulcted on him by invoking the principle of pay and recovery; despite showing that the deceased alone has contributed by his own negligence and was responsible for the accident, and that the insurer has not pleaded and established the necessary ingredients for invoking the principle of pay and recovery?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

10. The claimants in order to prove the mode of accident have examined P.W.2, alleged to be the occurrence witness and he would say in his chief examination that while he was waiting near the Baskara Pillai's house for taking his passenger, he had seen the occurrence, that the first respondent had driven the two wheeler from north to south in a rash and negligent manner and that Iyyappan, who was travelling as pillion rider has fallen down and sustained injuries. In cross examination, P.W.2 would reiterate that he had witnessed the accident, that no other vehicle had intervened, that both the rider as well as the pillion rider had fallen down and that he would deny the suggestion that he did not witness the occurrence.



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11.It is not in dispute that on the basis of the complaint lodged by the second claimant, FIR came to be registered in Crime No.543 of 2013 on 16.12.2013 under Section 304(A) of IPC under Ex.P.1 against the first respondent Rajasekaran, wherein, it has been stated that the accident was occurred only due to the rash and negligent driving of the first respondent. It is not in dispute that the jurisdictional police after completing the investigation, has laid the final report against the first respondent. As already pointed out, the first respondent has examined himself as R.W.1 and he would reiterate the contentions raised in his counter statement with regard to the mode of accident. But, in the cross examination, he would deny the suggestion that the deceased Iyyappan was not responsible for the accident. The claimants have also produced the copy of the observation Mahazer and Rough Sketch prepared during the investigation as Ex.P.6 and Ex.P.7 respectively. Admittedly, no other vehicle was involved in the accident.

12.As rightly pointed out by the Tribunal, the deceased has sustained 13 types of injuries due to the accident. As rightly observed by



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the learned trial Judge, in case, even assuming for arguments sake that the deceased due to his own negligence has fallen down and sustained injuries, there could be no chance or occasions for sustaining such kind of injuries. On perusing the evidence of P.W.1 and documents under Ex.P. 1, 5 and 8, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the first respondent cannot be found fault with and, this Court is in agreement with the finding recorded by the trial Court.

13.The main contention of the insurer is that the rider of the insured vehicle, viz., the first respondent was only holding learners license on the date of accident and he has chosen to obtain a permanent driving license only after the date of accident and that the trial Court has rightly applied the principle of pay and recovery.

14.The learned counsel appearing for the appellant would submit that the second respondent/insurer has neither pleaded nor established the necessary ingredients for invoking the doctrine of pay and recovery and that therefore, the trial Court erred in applying the principle of pay and



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recovery, as the deceased was only a gratuitous passenger, that the first respondent in his evidence would say that he was holding four wheeler license from 14.06.2013, that he was holding learners license for two wheelers at the time of accident, that since the accident had occurred, he could not obtain the regular license at that time and that immediately he had applied and got the same.

15.In the cross examination, he would say that he was holding the driving license to drive the two wheeler from 14.03.2014 and that no documents were filed to show that the first respondent was possessing learners license on the date of accident.

16.The second respondent/insurer has examined their Manager (Legal) Sankararaman as R.W.2 and he would say in his evidence that the first respondent had taken insurance policy for his two wheeler for the period from 07.09.2013 to 06.09.2014 and that the first respondent was holding learners license for the period from 20.09.2013 to 19.03.2014 and that he was not possessing valid driving license on the date of accident.

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17.As already pointed out, the second respondent has summoned and examined R.W.3 staff attached to the Marthantam Regional Transport Officer and he would say that the first respondent was having license to drive the two wheeler without gear, that the first respondent had obtained learners license from 14.03.2013 and he was only possessing learners license on 15.12.2013, i.e., the date of accident and subsequent to the accident, he obtained permanent driving license on 14.03.2014.

18.Considering the above, it is clearly evident that the first respondent was having learners license to drive the two wheeler from 20.09.2013 to 13.03.2014 and he obtained permanent license on 14.03.2014 and that he was only having learners license on 15.12.2013, the date on which the accident had occurred. At this juncture, it is necessary to refer to the definition for learners license under Section 2(19) of Motor Vehicles Act and it is relevant to extract paragraph Nos.8 to 11 of the order passed in ***C.M.A.(MD).No.3 of 2018*** in the case of ***National Insurance Company Vs. Balammal;***

8. At this juncture, it is necessary to refer the



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*definition for Learner-s License under Section 2(19)
of Motor Vehicles Act :*

*2. Definitions : (19) learner-s licence means the
licence issued by a competent authority under
Chapter II authorizing the person specified therein to
drive as a learner, a motor vehicle or a motor vehicle
of any specified class or description.?*

*Rule 3 of Central Motor Vehicle Rules 1989
reads as follows :*

*3. General.?The provisions of sub~section (1)
of section 3 shall not apply to a person while
receiving instructions or gaining experience in
driving with the object of presenting himself for a test
of competence to drive, so long as?*

*(a) such person is the holder of an effective
learner-s licence issued to him in Form 3 to drive the
vehicle;*

*(b) such person is accompanied by an
instructor holding an effective driving License to
drive the vehicle and such instructor is sitting in such*



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a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter “L” in red on a white background as under:

Note. The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter “L” shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom: 5 Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side~car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).

9. Considering the above, it is clear that a person with a learner-s license is expected to drive a vehicle only for the purpose of learning and while learning to drive a motorcycle, a holder of learner-s licence must be accompanied by an instructor so as



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to make an effective driving licence to drive such a vehicle.

10. It is the mandate of Rule 3 that such an instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The main purpose of Rule 3 is to ensure the safety of not only the learner but also of other persons using the road. Therefore, a person possessing a learner-s license, if not accompanied by an instructor as contemplated under the Rule 3(b) of the Central Motor Vehicles Rules 1989 would not be holding a valid licence.

11. The Hon-ble Supreme Court in National Insurance Company Limited Vs. Swaran Singh and others reported in 2004 (3) SCC 297, has held that in case of third party risks, the insurer has to indemnify the compensation amount payable to a third party and the insurance company may recover the same from the insured. The Hon-ble Apex court in Swaran Singh-s case has also considered the doctrine of pay and recovery, in case of breach of policy condition



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due to disqualifications of the driver or invalid instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The main purpose of Rule 3 is to ensure the safety of not only the learned but also of other persons using the road. Therefore, a person possessing a learner-s license, if not accompanied by an instructor as contemplated under the Rule 3(b) of the Central Motor Vehicles Rules 1989 would not be holding a valid licence.

19.Considering the legal position settled by the Honourable Supreme Court, the Tribunal has rightly invoked the doctrine of pay and recovery.

20.Now, turning to the quantum of compensation, the Tribunal taking note of post-mortem certificate has rightly fixed the age of the deceased as 60 years. Though the claimants have alleged that the deceased was doing Coolie work and was earning a sum of Rs.15,000/- per month, they have not produced any evidence to substantiate the same.



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The Tribunal taking note of the age of the deceased and nature of work, has notionally fixed the monthly income of the deceased at Rs.6,000/-.

21.The Honourable Supreme Court in *National Insurance company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609** has concluded that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be warranted, where the deceased was below the age of the 40 years an addition of 25% where the deceased was between the age of 40 to 50 years and and addition of 10% where the deceased was between the age of 50 to 60 years should be recorded as the necessary method of computation. Applying the above decision, the Tribunal has rightly added 10% of the income towards future prospects and it comes to Rs.6,600/- per month. Considering the number of the claimants, the Tribunal has rightly deducted 1/3 of income towards personal and living expenses of the deceased.

22.As per the decision of the Honourable Supreme Court in *Smt.Sarla Verma and others vs. Delhi Transport Corporation and*



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another reported in **AIR 2009 SC 3104**, the appropriate multiplier would be eight. Hence, the loss of dependency would be Rs.4,75,200/-.

23.The Tribunal has rightly awarded of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads. The Tribunal has also awarded of Rs.40,000 towards loss of consortium. Considering the above, the compensation award passed by the Tribunal is very much reasonable and the same cannot said to be excessive.

24.The learned counsel appearing for the third respondent has raised a technical objection that since the appellant has not deposited the mandatory pre-deposit amount of Rs.25,000/-, the appeal itself is legally not maintainable. At this juncture, it is necessary to refer Section 173 of Motor Vehicles Act:

173.(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court: Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court: Provided further that the High Court



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may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2)No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees

25.Considering the above provision, it is very much clear that no appeal by a person who is required to pay any amount in terms of award shall be entertained by the High Court unless, he has deposited a sum of Rs.25,000/- or 50% of the award amount which ever is less. The learned counsel appearing for the appellant would submit that the second respondent alone was directed to pay the amount and permission was granted to recover the same from the appellant and that since there was no order or direction in the award for the appellant to pay the amount, the question of depositing Rs.25,000/- by the appellant does not arise at all.

26.It is seen from the records that the Registry has raised the said query and the appellant's counsel has made an endorsement in the appeal memorandum stating that there is no direction to the appellant, who is the owner of the vehicle to pay compensation and hence, the appellant need not make any deposit of the amount for filing this appeal.

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27.The learned counsel for the insurer has relied on the judgment of this Court in ***S.Ananthanperumal Vs. A.Kingston and another*** passed in ***C.M.A.(MD).No.174 of 2008 dated 04.04.2018*** and the learned Judge of this Court, relying on the Full Bench judgment of the ***KERALA HIGH COURT in Pareeth Vs. Janaiya @ Karuppuswamy and others*** reported in ***2014(6) ctc 465***, has held that since the mandatory requirements of the pre-deposit have not been complied with, the civil miscellaneous appeal is not maintainable and the relevant passages are extracted hereunder:

37.We also notice that when Bill No.60 of 1988 was placed before the Parliament on 13.05.1988 introducing Motor Vehicles Act, 1988, the statement of objects and reasons have been provided therein along with notes on clauses to explain the provisions in the Bill. The same has been published as per the Gazette of India. Extraordinary, Part II, Section 2 (No.30 New Delhi May 13, 1988). As against Clause 173, the following explanation has been given.



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“Clause 173 makes provision for appeal to High Court by the persons aggrieved against the orders of claims Tribunal and where the person aggrieved is the person, who has to pay the compensation such person shall deposit twenty five thousand rupees or 50 percent of the amount awarded whichever is less”.

The same is also worthy to be noticed.

38.We answer the reference holding that Abdul Rahiman Vs.Rajan, 2004(2) TN MAC 572 (Ker.): 2004(2) KLT 1113, has not been correctly decided and accordingly it is overruled and we uphold the view taken as far as the legal issue raised herein, in the decision reported in Sridharan Vs. Prasad, 2011(2) KHC 777. The Appeals are sent back for consideration by the appropriate Bench.”

28.In the case on hand, the Tribunal has mulcted the entire liability on the appellant/owner of the vehicle and taking note of the interest of the claimants, the Tribunal by invoking doctrine of pay and recovery has



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directed the insurer to pay the compensation to the claimants and then to recover the same from the owner of the vehicle. Hence, the contention of the appellant, that no direction was issued to the appellant to make any payment, is absolutely devoid of substance and is liable for rejection.

29.Considering the provision of Section 173 of Motor Vehicles Act and the judgment above referred, this Court has no hesitation to hold that though the appellant is duty bound to deposit Rs.25,000/- towards mandatory pre-deposit for preferring the appeal, he has not complied with the mandatory requirement contemplated under Section 173 of Motor Vehicles Act and as such, this Civil Miscellaneous Appeal is not maintainable. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their cost and the above points are answered accordingly.

30.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 28.09.2018 passed in M.C.O.P.No.51 of 2015 on the file



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of the learned Chief Judicial Magistrate, Kanyakumari-cum-Motor Accidents Claims Tribunal, Nagercoil, is confirmed. The third respondent/insurer is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of copy of this judgment, if not already deposited. Thereafter, the third respondent is permitted to recover the same from the appellant. On such deposit being made, the respondents 1 and 2 are permitted to withdraw their shares together with interest and costs as apportioned by the Tribunal, on due application before the Tribunal. Parties are directed to bear their own costs.

24.11.2023

NCC : Yes/No
Index : Yes : No
Internet : Yes : No
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To

1.Chief Judicial Magistrate,
Kanyakumari-cum-Motor Accidents Claims Tribunal,
Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-delivery order made in
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