



C.M.A.(MD).No.797 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.797 of 2016

and

C.M.P(MD) No.7688 of 2016

The National Insurance Company Limited,
Represented by its Branch Manager,
Office Big Street,
Kumbakonam Town.

..... Appellant / Respondent No.2

-vs-

- | | |
|---------------|---------------------------------------|
| 1. Kala | Respondent No.1/ Petitioner No.1 |
| 2. Pushparani | Respondent No.2/ Petitioner No.2 |
| 3. Ramesh | Respondent No.3/ Petitioner No.3 |
| 4. Lalitha | Respondent No.4/ Petitioner No.4 |
| 5. Arulmari | ... Respondent No.5/ Respondent No.1 |

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.2 of 2013, dated 27.02.2014 by the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam.



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For Appellant : Mr.D.Sivaraman
For Respondents : Mr.B.Anandan – for R1 to R4
: No appearance – for R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed by the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam mainly on the ground that offending vehicle was driven by a person who was not having valid licence at the time of accident.

2. One Selvam, who was an employee in bricklin factory met with an accident on 19.07.2012 and died due to head injuries. The legal heirs of the said Selvam filed a claim petition contending that while the said Selvam was driving his bicycle, a Hero Honda Splendor bike came from back side, hit the bicycle, resulted in throwing away of the said Selvam and he succumbed to the injuries after reaching the hospital. The wife and the children of the deceased are the claimants. According to the claimants, the deceased was earning a sum of Rs.9,000/- (Rupees Nine Thousand only) per month by working in a bricklin factory run by P.W.3, one Kaliyamoorthy and they claimed a sum of Rs.50,00,000/- (Rupees Fifty Laks only) as compensation.



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3. The first respondent viz., owner of the vehicle remained ex-parte. The second respondent Insurance Company filed a counter contending that the deceased alone was responsible for the accident by rashly and negligently crossing the road. The Insurance Company has further contended that the offending vehicle was driven by a person without proper driving license and therefore, the Insurance Company is not liable to pay the compensation. The Insurance Company has further contended that the rider of the two wheeler has admitted before the Court of law that he was not in a possession of valid driving license at the time of accident and he has paid a fine of Rs.300/- (Rupees Three Hundred only). The Insurance Company has also disputed the quantum of compensation.

4. The Tribunal after considering the oral or documentary evidence, has arrived at a finding that the Insurance Company has not let in any evidence with regard to the alleged contributory negligence on the part of the deceased person. The Tribunal has also arrived at a finding that the accident has taken place only due to the rash and negligent driving of the offending vehicle belonging to the first respondent in the claim petition.



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5. The claimants have marked Ex.P-5 Salary Certificate of the deceased person which indicates that the deceased was receiving a salary of Rs.9,000/- (Rupees Nine Thousand only) per month from the owner of bricklin. The petitioner has also examined the owner of the said bricklin as P.W.3, in order to prove the said salary certificate. Based upon the salary certificate, the Tribunal has arrived at a finding that the deceased was drawing Rs.9,000/- (Rupees Nine Thousand only) as salary per month. Since he had left his wife and three other legal heirs, $\frac{1}{4}$ of the income was deducted. Under the head of loss of dependency a sum of Rs.7,29,000/- (Rupees Seven Lakhs Twenty Nine Thousand only) was awarded. The Tribunal has proceeded to award a sum of Rs.11,000/- (Rupees Eleven Thousand only) towards funeral expenses, Rs.10,000/- (Rupees Ten Thousand only) towards loss for love and affection for each one of the claimants, totally a sum of Rs.7,80,000/- (Rupees Seven Lakhs Eight Thousand only) was awarded as compensation with 7.5% interest per annum.



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6. The learned counsel appearing for the appellant /Insurance Company had contended that the driver of the offending Motor Vehicle is not having any valid driving license to drive the two wheeler at the relevant point of time. In order to establish the said fact, they have marked Ex.R.1, dated 04.10.2013 viz., the letter of R.T.O. Kumbakonam. However, no oral evidence has been let in on the side of the Insurance Company. The Insurance Company has also examined the Junior Assistant of R.T.O Office as R.W.1 to establish the contents of Ex.R1. The owner of the vehicle viz., the first respondent in the claim petition neither filed a counter nor contested the proceedings to prove that the driver of the Motor Vehicle at that point of time was having valid driving license.

7. Even though notice has been served in the present appeal, the owner of the vehicle/ fifth respondent has neither appear before this Court in person or through his counsel.

8. In view of the marking of Ex.R.1 and examination of R.W.1, this Court arrives at a finding that the driver of the offending vehicle was not having valid driving license at the relevant point of time. This Court does not



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find that the quantum of compensation is exorbitant, unreasonable under any one of the heads under which they have been awarded.

9. In view of the above said fact, the award passed by the Tribunal with regard to quantum is confirmed. The appellant/ Insurance Company is directed to pay the compensation to the claimants at the first instance and they are entitled to recover the same from the fifth respondent/owner of the vehicle by filing execution proceedings in the present M.C.O.PNo.2 of 2013, on the file of the Motor Accidents Claims Tribunal/Additional Sub-Court, Kumbakonam.

10. With the above said modification, this Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accident Claim's Tribunal/
The Additional Sub Court,
Kumbakonam.



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R.VIJAYAKUMAR,J.

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