BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.04.2023**

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.1122 of 2022
and
C.M.P.(MD).No.11453 of 2022

Branch Manager,
The Oriental Insurance Company Limited,
Gopal Rao Library Building,
Town Hall Road,
Kumbakonam

... Appellant

Vs.

1.Sangeetha
2.Sivanathan
3.Minor Neesha
(Minor represented through her mother/next friend
Tmt.Sangeetha)

... Respondents

PRAYER: The 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.63 of 2020, dated 15.06.2020 by the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Kumbakonam.

For Appellant	: Mr.E.Chandrasekaran
For R1 to R3	: Mr.A.S.Mathiyalagan

JUDGMENT

The Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Kumbakonam in M.C.O.P.No.63 of 2020, dated 15.06.2020.

2. The brief facts leading to the filing of this appeal are as follows:

The first petitioner is the wife and the second and third petitioners are the children of the deceased Eswaran @ Patteswaran. At the time of accident, the deceased was aged about 40 years. On 11.10.2019, at about 6.30 p.m., while the deceased was riding his two wheeler bearing Registration No.TN 49 V 3958 in Thirunageswaram – Kumbakonam Road from East to West, he dashed against an unidentified vehicle which was proceeding in front of the deceased vehicle. As a result, he sustained multiple injuries and immediately he was taken to the Government Hospital at Kumbakonam for treatment and thereafter, he was was referred to Thanjavur Medical College Hospital and he died on 03.11.2019. Hence, the petitioners have filed the claim petition before the Motor Accident Claims Tribunal, seeking compensation. The contention of the respondent/Insurance Company is that at the time of accident, the deceased has not possessed the valid driving licence. Therefore, they are not liable to pay the compensation.

3. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and Exs.P1 to P10 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

4. The Tribunal, after considering the entire evidence, awarded a sum of Rs.16,17,000/- as compensation, in the following manner:

S. No	**Description**	**Award Amount**
1.	Loss of dependency	Rs.15,40,000/-
2.	Loss of Consortium	Rs.44,000/-
3.	Loss of Estate	Rs.16,500/-
4.	Funeral expenses	Rs.16,500/-
	Total	**Rs.16,17,000/-**

5. The contention of the learned counsel appearing for the appellant/Insurance Company is that though there is a Personal Accident coverage, on the date of accident, the deceased did not have a valid licence and the licence was expired on 20.09.2019. Therefore, as per the terms of the contract, the Insurance Company is not liable to pay the award mount. He would further submit that the A.R. copy indicate that there was a smell of

alcohol on the deceased and the Doctor was also examined in this aspect. Therefore, the appellant/Insurance Company is not liable to pay the said amount.

6. The learned counsel appearing for the respondents would submit that though the licence was expired on 20.09.2019, prior to the expiry of the licence, he has made an application for renewal of licence, which was marked before the Tribunal. Therefore, his contention is that the licence can be renewed within 30 days and even within a week, he has made an application for renewal of licence. Therefore, the Insurance Company cannot take a defence to the effect that there is no valid driving licence. With regard to the smell of alcohol on the deceased, it is his contention that no medical evidence whatsoever produced to establish the same and the Doctor clearly admitted that no blood test has been taken. Therefore, mere smell of alcohol it cannot be presumed that the deceased was a drunkard. Hence, his contention is that the policy covers the Personal Accident and the family members of the deceased are entitled to Rs. 15,00,000/-.

7. In the light of the above submissions, now the point for consideration in this appeal is (i) when the contract stipulates for payment for personal

accident under Personal Accident Coverage, whether the Insurance Company can deny the same on the ground that the claim petition is not maintainable?

8. It is not in dispute that the application has been filed under Section 163 -A of the Motor Vehicles Act and the deceased drove the motorcycle and unfortunately died in the accident. Though the claim has been made under Section 163-A of the M.V. Act, the fact remains that the insurance is not disputed and the P.A. coverage to the tune of Rs.15,00,000/- also not disputed by the Insurance Company.

9. The only contention raised before this Court is that since the policy stipulated that the deceased should have an effective valid licence at the relevant point of time, as the licence expired in this case, they are not liable to pay the said amount. On perusal of the entire documents particularly, Ex.P10, the driving licence originally filed by the deceased, clearly indicate that the deceased possessed the driving licence to drive the motorcycle from 20.09.1999. Thereafter, the same has been extended and it was valid up to 2015 and again it was extended. Admittedly, the licence got expired only on 20.09.2019. Thereafter, within seven days he has applied for renewal of licence. Ex.P9 clearly indicate that he has made online application for renewal of

licence. The contention of the learned counsel for the appellant to the effect that he has made an application only for renewal of LMV transport vehicle and not for a motorcycle. Therefore, according to him, there is no valid licence at the relevant point of time. This Court is of the view that the application has been made for renewal of the entire licence not for the L.M.V. Transport vehicle alone. Therefore, merely because the online application is made generally for renewal it cannot be said that no such application has been made for renewing the two wheeler licence. Admittedly, original licence also covered for two wheeler licence. Therefore, once the application has been filed for renewal of licence within a week, it cannot be said that there is no valid licence at all. Section 15 of the Motor Vehicles Act makes it clear that the application for renewal of a licence is to be made either one year prior to date of its expiry or within one year after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal. He died on 03.11.2019, without the application for renewal is being decided. Such being the position, this Court is of the view that the contention of the Insurance Company that there is no effective valid driving licence at the time of accident cannot be countenanced.

10. As far as the contention that the deceased was a drunkard, though in the A.R. copy, it is stated that there is a smell of alcohol, this Court is of the

view that mere smell of alcohol itself is not sufficient to presume that the deceased was a drunkard. Unless the blood test and the parameters are properly followed a conclusive finding was recorded by the Medical Officer. The smell of alcohol may be due to various other reasons. Admittedly, there is a Personal Accident coverage and it covers a sum of Rs.15,00,000/- which cannot be denied and the Insurance Company has to pay the said amount on the death of the deceased, who was the owner of the vehicle. Accordingly, as per the policy, the claimants are entitled to Rs.15,00,000/- and the Insurance Company is directed to pay a sum of Rs.15,00,000/- with interest at the rate of 7.5% per annum, within a period of one month from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to a sum of Rs.7,50,000/- and the claimants 2 and 3 are equally entitled to the remaining amount. In respect of the minor claimant/3rd claimant, the amount shall be deposited in a Nationalised Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No cots. Consequently, the connected Miscellaneous Petition is closed.

28.04.2023

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N.SATHISH KUMAR,J.

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To

The Motor Accident Claims Tribunal
cum Principal Subordinate Judge,
Kumbakonam.

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