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CMA.No.1889 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1889 of 2024

1.Bhuvaneswari

2.Bharathkumar

... Appellants

vs.

1.Karthikeyan

2.The New India Assurance Company Limited,
Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 19.09.2023 in M.C.O.P.2138 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.Ma.Pa.Thangavel

For R1 : Mr.M.R.Thangavel

For R2 : Mr.M.Krishnamoorthy



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JUDGMENT

The appellants are the claimants in M.C.O.P.2138 of 2019 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one Ganesan (husband of claimant 1 and father of claimant 2) in a road accident that occurred on 15.10.2012.

2. The brief case of the appellants / claimants is as follows :

On 15.10.2012, Ganesan (since deceased) was standing on the left hand side of the road near Jeyashyam - PLR Grand Hotel at Tirupathi and at about 10.00 p.m., a speeding tourist bus bearing Registration Number TN-30-AA-7778 belonging to the first respondent, hit him, as a result of which, he sustained injuries all over his body. He was immediately rushed to Government Hospital, Tirupathi. Subsequently, he was shifted to Kurunchi Hospital, Salem, where his left leg was amputated. Though he was discharged on 05.11.2012, he died on



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15.12.2012.

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3. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN-30-AA-7778 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. The Tribunal vide its orders dated 18.02.2021, fastened negligence on the part of the driver of the bus bearing Registration Number TN-30-AA-7778 and awarded compensation of Rs.2,70,190/- to the appellants (claimants) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

4.1. Questioning the quantum of compensation awarded by the Tribunal, the claimants have filed C.M.A.No.2399/2021 before a Division Bench of this Court. The Division Bench vide its orders dated 16.03.2023 remanded the matter back to the Tribunal and directed the Tribunal to



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dispose of the said case within a period of twelve weeks from the date of the order after affording opportunity to the owner of the tourist bus bearing Registration Number TN-30-AA-7778. Thereafter, the Tribunal vide its orders dated 19.09.2023 dismissed the entire claim petition on the ground that the involvement of the tourist bus bearing Registration Number TN-30-AA-7778 has not been proved by the claimants. Aggrieved over the same, the appellants (claimants) have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants, Mr.M.R.Thangavel, learned counsel appearing for the first respondent and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent.

6. Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants contended that an FIR (Ex.P1) in Crime No.133/2012 was registered against the driver of the tourist bus bearing Registration Number TN-30-AA-7778 for the offence punishable under Section 337 IPC by the Traffic Investigation Wing, Tirupathi. He also relied on a copy



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of the Accident Register (Ex.P2) issued by the Casualty Medical Officer, S.V.R.R.G.G. Hospital, Tirupati, wherein it is clearly mentioned that the deceased Ganesan sustained injuries in a road accident that occurred on 15.10.2012. The registration number of the offending vehicle was also indicated in the Accident Register (Ex.P2). However, the Tribunal had dismissed the entire claim petition without any basis, is the contention of the learned counsel for the claimant.

7. Per contra Mr.M.R.Thangavel, learned counsel appearing for the first respondent / owner of the vehicle would contend that the bus bearing Registration Number TN-30-AA-7778 was not involved in the accident as alleged by the claimants and that the bus was actually on Thiruvannamalai - Salem Road. He further contended that the Tribunal had rightly concluded that the owner of the bus and its insurer are not liable to pay compensation to the claimants and dismissed the claim petition.

8. Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent, the New India Assurance Company Limited in its



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counter dated 29.04.2015 filed before the Tribunal had stated that they engaged a private investigator to find out the facts and they were informed by the investigator that the driver of the bus bearing Registration Number TN-30-AA-7778 was actually driving his vehicle at Tirupathi carefully and that the deceased Ganesan alone suddenly crossed the road unmindful of vehicular traffic.

9. The counter filed by the second respondent is totally in contradiction to the averments of the first respondent, the owner of the vehicle, who had contended that the bus was plying in the route Thriuvannamalai - Salem with passengers and not in Tirupathi. It is pertinent to point out that the trip sheet has not been filed by the first respondent, the owner of the vehicle.

10. The learned IV Additional Junior Civil Judge, Tirupathi, took the final report filed by the police in Crime No.133/2012 against S.Vijayakumar, the driver of the bus in C.C.No.10/2013 and acquitted the accused vide her judgment and orders dated 28.08.2014 on the ground that the prosecution has not proved that the driver of the bus was rash and



negligent in driving his vehicle. A perusal of the judgment shows that the Manager of the first respondent was examined as P.W.3 and he had stated that he received an intimation from Tirupathi Police that their bus bearing Registration Number TN-30-AA-7778 met with an accident. He also admitted that the accident had happened on 15.10.2012 at Tirupathi. In the circumstances, it cannot be stated that the bus bearing Registration Number TN-30-AA-7778 was not at Tirupathi on the date of accident. The owner of the bus relied upon the permit which was granted to the bus to ply between Thiruvannamalai and Salem and had taken a stand that the bus was not at Tirupathi. Actually the owner has deviated from the permit granted to the bus and thus violated policy conditions. The police records including the judgment of the IV Additional Junior Civil Judge, Tirupathi, clearly shows that the bus was at Tirupathi on 15.10.2012 and was involved in the accident.

11. In this regard, Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants / claimants relied on the decision in ***Rani and Others vs National Insurance Company Limited and Others*** reported in ***(2018) 8 SCC 492*** and contended that even in a case where there is no



valid permit the insurer should be directed to pay the award amount in the first instance and then recover the same from the owner of the vehicle. He also relied on the decision in ***Amrit Paul Singh and Another vs Tata AIG General Insurance Company Limited and Others*** reported in (2018) 7 SCC 558 wherein it has been held thus :

" 24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC



(Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle."

12. Following the above said decisions the second respondent, the New India Assurance Company Limited is directed to pay the award amount in the first instance and then recover the same from the owner of the vehicle under the same cause of action. **(Pay and Recover)**



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Quantum :

13. According to the claimants, Ganesan (deceased) was working as a heavy motor vehicle driver earning a sum of Rs.15,000/- per month. He was aged 50 years on the date of accident. In the accident his left leg was amputated and subsequently, he died on 15.12.2012. Therefore, the death of Ganesan is the proximate cause of the accident.

13.1. The claimants have not adduced any satisfactory evidence to prove the actual income of the deceased. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 10% is added towards future prospects of the deceased. Since there are two dependents, 1/3rd of the deceased's income should be



deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***.

Calculation

Notional Income = Rs.15,000/-

10% Future Prospects = Rs.16,500/-

After 1/3 deduction = Rs.11,000/-

Loss of dependency

= Rs.11,000/- x 12 x 13

= Rs.17,16,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- for 'Loss of Consortium', 'Loss of Estate' and 'Funeral Expenses' respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.20,96,190/- (17,16,000 + 80,000 + 15,000 + 15,000 + 2,70,190 = 20,96,190) as shown in the following



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tabular column.

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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.17,16,000/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Medical Expenses	Rs.2,70,190
TOTAL		Rs.20,96,190/-

14. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The orders dated 19.09.2023 in M.C.O.P.2138 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, is hereby set aside.
- iii. The appellants / claimants are directed to pay the court fee for the compensation amount, within a period of four weeks from the date



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of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

iv. The second respondent, the New India Assurance Company Limited, Salem, is directed to deposit the compensation amount of Rs.20,96,190/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.2138 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, in the first instance and then recover the same from the owner of the vehicle under the same cause of action. **(Pay and Recover)**

v. Apportionment :

1st claimant / Wife	Rs.15,96,190/- (with costs and interest)
2nd claimant / Son	Rs.5,00,000/-

vi. On such deposit being made, the appellants (claimants) are at liberty to withdraw the same as per the apportionment made by this



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Court.

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vii.The appellants (claimants) are not entitled to claim interest for the period of delay of 48 days in filing this appeal.

26.09.2024

Index : Yes/No
Speaking/Non-speaking order
mtl

To

1.The Motor Accidents Claims Tribunal,
Special District Court, Salem.

2.The New India Assurance Company Limited,
Salem.

3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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