



CMA No.3001 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.3001 of 2021
and C.M.P. No.17131 of 2021

Judgment reserved on 21.02.2024	Judgment pronounced on 01.03.2024
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The Oriental Insurance Company Ltd.,
represented by its Branch Manager
Arunagiri Complex, Ground Floor,
25/C, Bye-pass Road, Hosur Tower & Taluk,
Krishnagiri District – 635 109.

..

Appellant

Vs.

1.Banumathi
2.Minor M.Thendralkumar
3.Minor Dhivinkumar
4.Poongavanam
5.K.Shanmugam

..

Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 04.02.2021 made in MCOP No.79 of 2018 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Palacode.



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For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.P.M.Jayachandran
for R1 to R4

No appearance for R5

J U D G M E N T

The Insurance company is the appellant herein challenging the award passed by the Tribunal dated 04.02.2021 made in MCOP No.79 of 2018 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Palacode on the ground of liability as well as quantum.

2. Before the Tribunal, the respondents 1 to 4 / claim petitioners have contended that the accident had taken place due to the rash and negligent driving by the driver of the tipper lorry, the offending vehicle who dashed against the vehicle driven by the deceased. In the said accident, the said Murugesan died on the spot.



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WEB COPY 3. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that at the time of accident, the deceased Murugesan was not possessing valid driving licence and while trying to overtake the tipper lorry, hit against the same and he himself fell down and sustained injury. It is further contended that on the date of accident, the tipper lorry does not have fitness certificate to ply on the road and hence for violation of policy condition, the appellant/insurance company is not liable to pay compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition.

4. On the above pleadings, the trial was conducted by the Claims Tribunal. During the trial, the first respondent/claim petitioner examined herself as PW1 and marked Exs.P1 to P15. On the side of the appellant/Insurance company, RW1 & RW2 were examined and Exs.R1 & R2 were marked.



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WEB COPY 5. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving by the driver of the tipper lorry bearing Regn.No.TN 70 K 0475 belonging to the fifth respondent which was insured with the appellant/Insurance company. The Tribunal also held that non-possession of fitness certificate is only a technical violation and therefore the appellant/Insurance Company is jointly and severally liable to pay the compensation to the respondents/claim petitions. Accordingly, the Tribunal awarded a sum of Rs.15,52,500/- as compensation alongwith interest @ 7.5% per annum and also directed the appellant/Insurance company not to deduct TDS, as per the judgment of this Court in CRP (PD) No.1343 of 2012 dated 02.06.2016. Hence, the present appeal.

6. Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance company would contend that the question of deduction of 10% TDS is now pending before the Hon'ble Supreme Court and further contended that on the date of accident, the deceased was not possessing valid



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driving licence to drive the vehicle. He further contended that as per evidence of RW2, Junior Assistant, RTO office, Palacode and Ex.P2 – MVI report, on the date of accident, the Tipper Lorry does not have a valid fitness certificate. He also contended that the compensation awarded by the Tribunal is on the higher side and prayed for allowing the appeal.

7. The learned counsel appearing for the respondents 1 to 4 / claim petitioners made his submissions in support of the award passed by the Tribunal.

8. Heard the learned counsel appearing for the appellant/Insurance company as well as the respondents 1 to 4 / claim petitioners and perused the materials on record.

9. After perusing the evidence of PW2 - occurrence witness and also Ex.P1 – FIR, this Court finds that the manner of accident, as projected by the claim petitioner stands proved. PW2 has narrated the manner of the accident. Ex.P1 – FIR has been registered against the driver of the tipper lorry and the



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same corroborates the evidence of PW1 & PW2. As per the evidence of the first respondent/claim petitioner as PW1, the tipper lorry was driven by its driver in a rash and negligent manner without sounding horn and dashed against the van driven by the deceased which clearly shows the negligence of the driver of the tipper lorry. It is also to be noted that the driver of the tipper lorry was not examined on the side of the appellant/insurance company. No eye-witness was examined by the appellant/insurance company to corroborate their stand that the deceased was at fault. On the other hand, the respondents/claim petitioners have proved their case by probable evidence and hence the finding rendered by the Tribunal that the accident had taken place only due to rash and negligent driving by the driver of the tipper lorry is hereby confirmed.

10. As far as quantum of compensation is concerned, it is the claim of the respondents/claim petitioners that at the time of accident the deceased was doing vegetable business and earning a sum of Rs.25,000/- per month. However, they have not substantiated the said claim by producing documents. Taking into consideration the age of the deceased at the time of accident



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being 43 years based on Exs.P2 & P3 – post mortem certificate & death certificate respectively and the year of accident, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased. Following the judgement of the Hon'ble Supreme Court in ***SARLA VERMA & OTHER v. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC (1) SC and National Insurance Company Limited v. Pranay Sethi and others reported in 2017 (2) TNMAC 609***, the Tribunal rightly applied multiplier 14 and awarded 25% enhancement towards future prospects. Since there are four dependants, after deducting 1/4th towards personal expenses of the deceased, the Tribunal awarded a sum of Rs.11,34,000/- as compensation towards loss of dependency. The amounts awarded by the Tribunal under various heads are also just and reasonable. Hence, I do not find any reason to interfere in the judgment of the Tribunal. Accordingly, the compensation awarded by the Tribunal is confirmed.

11. As per the evidence of RW2, Junior Assistant, RTO Office, Palacode, the tipper lorry belonging to the fifth respondent does not have fitness certificate and the same has expired on 21.03.2008. Ex.R2 was marked



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to prove the same. The accident has occurred on 19.04.2018. Thus, this Court is of the considered view that on the date of accident, there was no valid fitness certificate for the offending vehicle, viz. Tipper lorry. Following the decision reported in *2008 (1) TNMAC 191 (New India Assurance Co. Ltd. v. Palanisamy and others)* and the judgment rendered by this Court in ***CMA No.1576 of 2015 dated 19.04.201 (United India Insurance Company Ltd. v. R.Vivekandandan)***, pay and recovery has to be ordered. With regard to the plea of TDS, as the subject matter is now pending before the Hon'ble Supreme Court, I am inclined to pass the following order -

(a) the appellant/Insurance company is hereby directed to deposit 90% of the award amount in one cheque and 10% of the award amount towards TDS by way of a separate cheque before the Tribunal.

(b) On such deposit, out of the 90% of the award amount, the respondents 1 & 4 are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, less the amount already withdrawn, if any.



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(c) With regard to 10% of the award amount, the same shall be kept to the credit of MCOP No.79 of 2018 till the disposal of the decision of the Hon'ble Supreme Court in this regard on the point of deduction of TDS.

(d) In all other aspects, the appellant/Insurance Company is at liberty to pay the compensation to the respondents/claim petitioners at the first instance and recover the same from the fifth respondent, owner of the offending vehicle.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, confirming the compensation awarded by the Tribunal granting liberty to the appellant / insurance company to pay the compensation to the respondents/claim petitioners to the extent indicated above, along with 7.5% interest per annum, at the first instance and recover the same from the fifth respondent, owner of the offending vehicle

(ii) the appellant/Insurance Company Limited is directed to deposit the award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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WEB COPY(iii) on such deposit being made, the respondents 1 & 4 /claim petitioners are permitted to withdraw their share of the award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/no

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Palacode.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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RMT.TEEKAA RAMAN.J,

rgr

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