IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.1577 of 2023

1.Parimaladevi

2.Sangeetha

3.Maheshkumar .. Appellants

Vs.

1.Prakalathan

2.The Manager,
IFFCO – TOKIO General Insurance Company Ltd.,
OKS Building, College Road, 2nd Cross Street,
Near Old IT office, 5 KNP Puram,
Tirupur – 641 602. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 13.04.2023 made in M.C.O.P.No.953 of 2020 on the file of the Exclusive Motor Accident Claims Tribunal at Tiruppur.

For Appellants	:	Mr.Ma.P.Thangavel
For R1	:	No appearance
For R2	:	Mr.J.Michael Visuvasam

JUDGMENT

The claimants who are the wife, daughter and son of the deceased Rathinasamy have filed this appeal against the award passed by the Presiding Officer, Exclusive Motor Accident Claims Tribunal, Tiruppur, in M.C.O.P.No.953 of 2020 dated 13.04.2023.

2.The case of the claimants is that the deceased Rathinasamy was walking on the margin of the road on 21.08.2020 and at about 06.45 PM, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and it hit the deceased and as a result, the deceased sustained grievous injuries and he ultimately succumbed to the injuries on 01.09.2020. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. Having rendered such a finding, the Tribunal found that the rider of the two wheeler did not possess a valid driving license. Therefore, the Tribunal proceeded to exonerate the Insurance Company and directed the compensation to be paid by the 1st respondent, being the owner of the vehicle.

4.The Tribunal thereafter proceeded to fix the total compensation at Rs.14,03,803/- under various heads as follows:

Sl. No.	Under the Head	a) Calculation	b) Amount
1)	Monthly Income (Monthly income + Future Prospects NIL)	Rs.12,000/- + NIL	Rs.12,000/-
2)	Deduction of 1/3rd towards personal expenses of the deceased	Rs.12,000/- - Rs.4,000/- = Rs.8,000/-	Rs.8,000/-
3)	Loss of Annual Income	(Rs.8,000/- X 12) = Rs.96,000/-	Rs.96,000/-
4)	Loss of Income after applying multiplier 7	Rs.96,000/- X 7 = Rs.6,72,000/-	Rs.6,72,000/-
5)	**Compensation**		
c)	Loss of Income		Rs.6,72,000/-
d)	Funeral expenses		Rs.16,500/-
iii)	For loss of Estate		Rs.16,500/-
iv)	**For loss of consortium -** Spousal consortium to the 1st petitioner – Rs.44,000/- Parental consortium to the petitioners 2 and 3 – Rs.44,000/- each		Rs.1,32,000/-
v)	**Medical Expenses** as per Ex.P6		Rs.5,66,803/-
	Total Award amount		Rs.14,03,803/-

5.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

6.The claimants have filed this appeal questioning the finding rendered by the Tribunal by exonerating the Insurance Company from paying the compensation to the claimants.

7.Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court has also carefully gone through the award passed by the Tribunal.

10.The Tribunal has come to a conclusion that since the 1st respondent was the owner-cum-rider of the vehicle and he was not possessing a valid driving license, the same is in violation of the terms of the Insurance Policy. Therefore, the Insurance Company was exonerated and the 1st respondent was directed to pay the compensation.

11.It is now too well settled that in so far as the third party claims are concerned, the rider of the offending vehicle not possessing a valid driving license will result in applying the principle of pay and recovery. Hence, the compensation that has been fixed by the Tribunal shall be paid by the Insurance Company and the Insurance Company will be entitled to recover the same from the 1st respondent.

12.The finding of the Tribunal completely exonerating the Insurance Company from paying the compensation is hereby set aside.

13.In so far as the quantum of compensation fixed by the Tribunal is concerned, the same is reasonable and it does not require the interference of this Court.

14.In the result, the Civil Miscellaneous Appeal is allowed and compensation awarded by the Tribunal at Rs.14,03,803/- stands confirmed and there shall be a direction to the 2nd respondent – Insurance Company to deposit the compensation fixed by the Tribunal along 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the same in the manner indicated by the Tribunal. On such deposit, it will be left open to the 2nd respondent – Insurance Company to recover the same from the 1st respondent. No costs.

03.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Presiding Officer,
Exclusive Motor Accident Claims Tribunal,
Tiruppur,

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

N.ANAND VENKATESH, J.

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