IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.103 of 2024

1. Chinnammal
2. Thavamani
3. Major Suvedha
4. Minor Rejibha

3rd appellant declared as major and next friend
her mother viz., Thavamani discharge from the
guardianship vide Court order 16.12.2021 made
in C.M.P.No.20753 of 2021 in C.M.A.S.R.No.111530 of 2021
... Appellants

Vs.

1. R.Murugesan
2. The National Insurance Company Limited,
   Having office at
   No.2, Balaji Tower, 2nd Floor,
   No.2, Ramakrishna Road, Salem 7.
3. S.Dinish ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to enhance the compensation awarded by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Attur by fair and final order dated 27.09.2011 in M.C.O.P.No.104 of 2007.

For Appellants	:	Mr.L.Mouli
For R1	:	Notice not ready
For R2	:	Mr.D.Bhaskaran
For R3	:	Left

JUDGEMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants, challenging the fixation of liability as well as the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Attur in M.C.O.P.No.104 of 2007, dated 27.09.2011.

2. On 05.05.2007, at about 7.30 p.m., when Mr.Periyasamy, who is the husband of second appellant, was riding his two wheeler namely TVS 50, he was hit by a Mini Door vehicle bearing Reg.No.TN-72-R-3994, which was insured with second respondent/Insurance Company, driven by its driver which came from opposite direction, in a rash and negligent manner. Due to the impact, the said Mr.Periyasamy sustained grievous injuries all over his body and he had succumbed to death. Hence, the

appellants, being the mother, wife and children of the deceased made a Claim Petition seeking a sum of Rs.6,27,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.5,71,000/- towards compensation to the appellants. Being not satisfied with the compensation amount, the appellants have filed the present appeal.

4. The learned counsel for the appellants contended that, in the present case, the Tribunal has fastened the negligence on the part of the driver of the Mini Door vehicle/third respondent. However, the liability was fastened on the owner of the vehicle, though the vehicle was insured with the second respondent/Insurance company and the Insurance Policy was also issued in favour of the owner of vehicle by the second respondent. Further, he referred to the judgment of Hon'ble Apex Court in the case of ***Mukund Dewangan vs.Oriental Insurance Co.Ltd.***, reported in **(2017) 14 Supreme Court Cases 663**, wherein it has been held that if the vehicle does not exceed 7500 kg, it would be considered as a light motor vehicle and there is

no requirement to obtain separate endorsement/badge to drive transport vehicle and if a driver is holding licence to drive light motor vehicle is sufficient. Therefore, the learned counsel would urge this Court to fasten the entire liability on the 2nd respondent/Insurance company.

5. The learned counsel appearing for the second respondent/Insurance Company, though made some objections initially, however, he had accepted the law laid down by the Hon'ble Apex Court in the above cited case.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

7. As noticed above, the accident took place in the year 2007 and there is no dispute with regard to the offending vehicle which caused the accident, was insured with the second respondent/Insurance Company. Further, there is no dispute with regard to rash and negligent driving of the

third respondent who drove the offending vehicle and fastening the liability against the driver of the Mini Door vehicle, since he drove the vehicle in a rash and negligent manner. The dispute is with regard to the payment of compensation to the appellants since the Tribunal fastened the liability on the part of the owner of the offending vehicle instead of 2^{nd} respondent Insurance Company on the ground that the driver of the offending vehicle did not wear the badge/endorsement while driving the vehicle.

8. Now the only point that arises for consideration is that whether non-wearing of badge/endorsement, while driving the light motor vehicle, is liable to pay entire compensation?

9. The Tribunal has fastened the entire liability on the part of the owner of the offending vehicle on the ground that the driver of the vehicle has not obtained separate endorsement to drive the transport vehicle. The Hon'ble Supreme Court in the case of ***Mukund Dewangan*** (cited supra), has categorically held that if the vehicle does not exceed 7500 kg, it would be considered as a light motor vehicle and there is no requirement to obtain

separate endorsement/badge to drive transport vehicle and if a driver is holding licence to drive light motor vehicle is sufficient. The relevant portion as found in para 60.2, is extracted as under:

> "60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form."

10. In the present case, the offending vehicle involved in the accident is Minidoor Tempo, which does not exceed 7500 kgs and hence, it has to be construed as light motor vehicle. When such being the situation, as per the dictum laid down by the Hon'ble Supreme Court, there is no requirement to obtain separate endorsement on the licence to drive the light motor vehicle.

It is not in dispute that the 3rd respondent was possessing driving licence and he drove the transport vehicle i.e. Minidoor Tempo, which is a light motor vehicle below 7500 kgs. Therefore, the entire liability fastened on the part of the owner of the offending vehicle by the Tribunal cannot be sustained and the same is set aside and consequently, the liability is fastened on the part of the 2nd respondent /Insurance. Accordingly, the 2nd respondent/Insurance company is directed to pay the entire amount of compensation to the appellants as awarded by the Tribunal.

11. As regards the quantum of compensation is concerned, at the time of accident, the deceased was aged about 30 years and was carrying on agricultural works and also working as a lorry driver and earning a sum of Rs.10,000/- per month. However, without considering the same, the Tribunal had erroneously fixed the notional income of the deceased at Rs.3,500/-, which in the opinion of this Court, is very meager. On relying upon the ratio laid down by the Hon'ble Apex Court, in the case of ***Syed Sadiq Vs. United India Insurance Company,*** reported in ***2014 (1) TNMAC 459 (SC)***, wherein the Apex Court fixed the notional monthly income even for a

vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008. In the present case, as noticed above, the accident took place in the year of 2007 and on considering the nature of employment of the deceased, this Court is inclined to re-determine and fix the notional income of the deceased at Rs.6,000/- per month including future prospects, which would be just and reasonable; deducting 1/4th towards personal and living expenses of the deceased, the loss of income to the family is arrived at Rs.4,500/- per month. The deceased was aged about 30 years at the time of accident as evidenced from the records and by adopting the multiplier '17' as per the decision of Apex Court, the loss of income to the family is arrived at Rs.4,500x12x17=Rs.9,18,000/-.

12. This Court finds that the Tribunal has awarded a sum of Rs.5,000/- under the head "funeral expenses", a sum of Rs.3,000/- under the head "transportation" and a sum of Rs.10,000/- under the head "loss of estate", which are on the lower side. Therefore, this Court is inclined to award a sum of Rs.15,000/- towards "funeral expenses", a sum of Rs.10,000/- towards "transportation" and a sum of Rs.15,000/- towards "loss

of estate" respectively.

13. A sum of Rs.15,000/- awarded by the Tribunal under the head "loss of love and affection" which also appears to be low. Therefore, this Court is inclined to award a sum of Rs.40,000/- each to the appellants 3 and 4 towards "loss of love and affection". Further, this Court finds that the Tribunal has failed to award any amount towards "loss of consortium". Hence, this Court is inclined to award a sum of Rs.40,000/- to the first appellant towards "loss of parental consortium" and a sum of Rs.40,000/- to the second appellant towards "loss of consortium".

14. Insofar as the compensation awarded by the Tribunal under other head viz., "attender charges" is concerned, this Court finds that the same is just and proper and is hereby confirmed.

15. Thus, the total compensation payable to the appellants are modified and enhanced as hereunder:-

Heads	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
Loss of Income	**5,35,500/-**	**9,18,000/- (enhanced)**
Loss of love and affection (to the appellants 3 & 4)	**15,000/-**	**80,000/- (enhanced)**
Loss of parental consortium	**Nil**	**40,000/- (awarded)**
Loss of consortium	**Nil**	**40,000/- (awarded)**
Funeral expenses	**5,000/-**	**15,000/- (enhanced)**
Transportation	**3,000/-**	**10,000/- (enhanced)**
Loss of estate	**10,000/-**	**15,000/- (enhanced)**
Attender charges	2,500/-	2,500/-
Total	**5,71,000/-**	**11,20,500/-**

16. Consequently, the total compensation amount of **Rs.5,71,000/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.11,20,500/-,** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit. Out of total compensation availed to the appellants/claimants, first appellant, the mother of the deceased is entitled to a sum of Rs.1,20,500/- together with proportionate interest; second appellant, the wife of the deceased is entitled

to a sum of Rs.6,00,000/- together with proportionate interest; third and fourth appellants, the children of the deceased are entitled to a sum of Rs.2,00,000/- each together with proportionate interest.

17. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellants/claimants are entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

(iv) It is made clear vide order dated 19.12.2023, the appellants/claimants will not be entitled for interest for the delay period of 3065 days in filing the Civil Miscellaneous Appeal.

(v) The appellants/claimants are directed to pay the Court fee for the enhanced compensation, if any.

(vi) There shall be no order as to costs.

27.02.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal
   -cum-Subordinate Judge,
   Attur.

2. The Section Officer,
   V.R. Section,
   High Court, Madras.

Krishnan Ramasamy,J.,

jd

C.M.A.No.103 of 2024

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