



CMA.No.3029 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal No.3029 of 2018
and CMP No.22982 of 2018

The Divisional Manager,
The New India Assurance Co. Ltd.
Divisional Office (721800), 14/7, K.G.Complex,
Bagalur Road, Hosur Post,
Krishnagiri District, Tamil Nadu 635 109. ... Appellant

Vs

1. Savithriamma
2. Minor Prema
3. Minor Vijay
Minors rep by their mother & NF Savithriamma
4. Murugammal
5. L.Balaji ... Respondents



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Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree in MCOP No.23 of 2015 dated 23.04.2018 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Hosur.

For Appellants : Mr. M.Krishnamoorthy

For Respondents : Mr.V.Kumaravelan, for R1 to 4

R5 – No appearance

J U D G M E N T

The Insurance Company is on Appeal challenge is to the award of the Tribunal dated 23.04.2018 made in MCOP No.23 of 2015.

2. The claimants who are the wife, children and mother of the deceased Muniraj, who died in a motor accident that occurred on 20.12.2014 at around 6 p.m. sought for compensation of Rs.25,00,000/-.

Though, according to the claimants, they are entitled to a sum of

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Rs.81,61,500/- as compensation, they had restricted it to Rs.25,00,000/-.

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3. It was claimed that the accident occurred when Muniraj was riding his TVS Super XL Motor Cycle bearing Registration No.TN-24-X-4073 on Kelamangalam to Hosur Road, the Mahendra Pickup Van bearing Registration No.TN-24-V-9236 driven by its driver Karhik (R.W.1) in a rash and negligent manner came from the opposite direction and hit against the Motor Cycle. As a result of the impact, the deceased Muniraj was thrown off the vehicle, sustained fatal injuries and died eventually on the way to Hospital. Terming the negligence on the part of the driver of the Pickup Van as the caused for the accident, the claimants sought, to make the Insurance Company, which is the insurer of the Pickup Van, liable for payment of compensation.

4. The Insurance Company resisted the claim contending that it is not liable to pay compensation since the driver of the Motor Cycle did not have a valid driving license on the date of the accident. The claim that the driver was negligent and the age and income particulars were also denied by the



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Insurance Company.

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5. At trial, the first claimant/wife of the deceased was examined as P.W.1 and one Balappa an eyewitness was examined as P.W.2. While the driver of the vehicle was examined as R.W.1, one Mohankumar and one Sivaprakasam were examined as R.Ws. 2 and 3. The First Information Report was marked as Ex.P1 and the Insurance Policy was marked as Ex.P3.

6. From the contents of the FIR and the evidence of P.W.2, the learned Tribunal came to the conclusion that the accident had occurred due to the negligence of the driver of the Pickup Van and as such the Insurance Company would be liable to pay compensation. The Tribunal took the notional income at Rs.10,000/-, deducted 1/4th for personal expenses and fixed the loss of dependency at Rs.90,000/-, it applied the multiplier of 16 and arrived at the total loss of contribution at Rs.14,40,000/-. On the head of future prospects, the Tribunal added 40% and arrived at the total loss of dependency at Rs.20,16,000/-. It also awarded a sum of Rs.40,000/- to the

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first claimant for loss of consortium and Rs.40,000/- to the other claimants for loss of love and affection, apart from awarding Rs.10,000/- towards transportation and Rs.15,000/- each towards funeral expenses and loss of estate. Thus the total compensation works out to Rs.21,36,000/-.

7. On the plea of the Insurance Company that the driver did not have a valid driving licence, the Tribunal found that the driver had possessed a licence which was marked as Ex.C1. The Tribunal rejected the contention of the Insurance Company to the effect that since Ex.C1 is only for driving a Light Motor Vehicle and the same is not sufficient, since the driver was found to have driven a Pickup Truck which requires a badge or an endorsement. The said contention of the Insurance Company was rejected by the Tribunal based on the judgment of the Hon'ble Supreme Court in ***Mukund Dewgan Vs. Oriental Insurance Company Limited***, reported in ***2017 (2) TANMAC 145 (SC)***.

8. We have heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Mr.V.Kumaravelan, learned counsel appearing for the



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respondents 1 to 4 viz. the claimants. The fifth respondent, the owner of the vehicle, though served is not appearing either in person or through counsel duly instructed

9. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/Insurance Company would vehemently contend that the Tribunal overlooked the fact that the licence Ex.C1 was issued only on 02.01.2015 and the accident had occurred on 20.12.2014. Therefore, on the date of the accident, the driver R.W.1 was not holding a valid driving licence.

10. We have perused Ex.C1 and we find that it has been issued only on 02.01.2015 as contended by the learned counsel. The Tribunal has lost sight of the fact that the licence was issued after the accident. Therefore, it is clear that on the date of the licence, the driver was not possessed of a valid driving licence. In view of the above, the consequence will have to follow. The consequence is that there will be an order of pay and recovery in favour of the Insurance Company. We do not find anything amiss in the quantum of compensation awarded by the Tribunal and we affirm the same.



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11. This Appeal is therefore **allowed** to the limited extent that the Insurance Company will be at liberty to recover the compensation that it is forced to pay under the award from the fifth respondent/ owner of the vehicle. Recovery will be in the same proceedings. We make no order as to costs in the Appeal. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
23.02.2024

jv

Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

- 1.The Additional District Judge
Motor Accident Claims Tribunal,
Hosur.
- 2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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