



C.M.A.(MD).No.759 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 11.12.2023

PRONOUNCED ON : 30.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.759 of 2012

and

M.P.(MD)No.2 of 2012

The Branch Manager,
The United India Insurance Co. Ltd.,
Divisional Office,
Jeevajothe Building, Salai Road,
Dindigul Town.

... Appellant

Vs.

1.Pandi

2.Prema

3.M.Selvam

... Respondents

(Memo dated 17.11.2023 in USR No.39763 is recorded,
to the effect that notice to respondent no.3 is dispensed
with, as he was set exparte before the Tribunal, vide
Court order dated 11.12.2023 made in
C.M.A.(MD)No.759 of 2012 by LVGJ)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, to set aside the judgment and decree in dated
28.11.2011 passed in M.C.O.P.No.557 of 2009 on the file of the Motor



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Accident Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court), Dindigul.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents 1 & 2 : No Appearance
For 3rd Respondent : Dispensed With

JUDGMENT

This Civil Miscellaneous Appeal is filed as against the judgment and decree of the learned Motor Accident Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court), at Dindigul in M.C.O.P.No.557 of 2009 dated 28.11.2011 by the appellant/second respondent insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.557 of 2009.

3.The brief facts leading to filing of the Civil Miscellaneous Appeal is as follows:-

The petitioners are the parents of the deceased minor girl Ramya aged about 11 years. On 01.05.2008 at about 12.30 p.m., while the petitioners' daughter Ramya was standing in front of Mangalam Coffee Bar near Ganesh Theatre, at R.S.Road, Dindigul, a tempo van bearing

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registration No.TN-07-A-2319 which was driven by its driver in a rash and negligent manner dashed against the minor Ramya, resulting her death. Seeking compensation of Rs.3,00,000/- for the death of their daughter, the petitioners filed this claim petition.

4.The first respondent is the driver of Tempo van and the second respondent is the insurance company with which the Tempo van was insured. The second respondent has filed a counter before the learned Tribunal refuting all the allegations set forth in the claim petition.

5.The learned Tribunal has framed two issues. Two witnesses P.W. 1 and P.W.2 were examined and Ex.P1 to Ex.P5 were marked on the side of the petitioners and two witnesses were examined as R.W.1 and R.W.2 and Ex.R1 to Ex.R7 were marked on the side of the respondents. The first respondent was called absent and was set exparte. On the basis of the oral and documents evidence adduced and considering the arguments submitted by both the parties, the learned Tribunal came to a conclusion that the first respondent driver is fully responsible for the cause of the accident and since the first respondent's Van has been insured with the



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second respondent, held that both the respondents are jointly and severely liable for the accident, the learned Tribunal directed the respondents to pay the compensation amount to the petitioners.

6.On the basis of Ex.P1 FIR and Ex.P2 post mortem report, the age of the deceased Ramya was 11 years at the time of accident. As per Ex.P3 Legal Heirship Certificate, the petitioners are the legal heirs of the deceased Ramya. The deceased Ramya was a student and was not earning income at the time of accident. Hence, the learned Tribunal has relied upon the judgment of the Hon'ble Apex Court in the case of ***K.R.Malik v. Kiranpal*** reported in ***2009 (8) Scale 451*** and has granted a sum of Rs.2,25,000/- towards non pecuniary damages, a sum of Rs.75,000/- towards future prospects and a sum of Rs.75,000/- towards loss of love and affection. Hence, since the petitioners have restricted their claim to a sum of Rs.3,00,000/-, the learned Tribunal has awarded a total compensation of Rs.3,00,000/- to the petitioners and the award passed by the learned Tribunal, reads as follow:-

Head	Compensation awarded
(i)Non Pecuniary Damages:	Rs.2,25,000/-



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(ii)Future prospects:	Rs.75,000/-
(iii)Loss of love and affection:	Rs.75,000/-
Total compensation awarded:	Rs.3,00,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, the second respondent insurance company has filed this Civil Miscellaneous Appeal.

8.Heard the learned counsel appearing for the appellant Mr.G.Prabhu Rajadurai and there is no representation for the respondents despite the case posted on 15.11.2023, 20.11.2023, 27.11.2023 and 11.12.2023 and perused the materials available on record.

9.The learned counsel for the appellant/second respondent has submitted that R.W.1 deposed evidence stating that the driver who drove the vehicle of the first respondent namely Ramachandran had valid driving licence only during the period 12.08.1998 to 11.08.2001. However, thereafter, he failed to renew his licence and the accident took place on 01.05.2008 and as on particular date, the said Ramachandran did not possess valid licence. Hence, there is violation of policy



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conditions and on that basis, the second respondent is not entitled to indemnify the first respondent's liability. Hence, the liability ought to have been fixed by the learned Tribunal only exclusively on the owner.

10.However, R.W.2 in his evidence had admitted that the vehicle involved in the accident was insured with the second respondent and the same was in-subsistence at the time of accident. It is further admitted by R.W.2 that charge sheet has been filed by the jurisdictional police as against the driver of the first respondent namely Ramachandran. On that basis, the learned counsel for the second respondent insurance company pressed for allowing the appeal relieving the second respondent from indemnifying the liability of the first respondent.

11.In the instant case, the minor girl of age 11 years has died in the accident, which happened on 01.05.2008 and the vehicle involved in the accident bearing registration No.TN-07-A-2319 was driven by the driver namely one Ramachandran of the first respondent owner and though it is deposed by R.W.1 that the driver did not possess valid driving licence at the time of arguments, the learned Tribunal had gone into depths of



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evidences deposited by various witnesses and taking note of the fact that the jurisdictional police has registered a charge sheet as against the said driver Ramachandran and observing that no offence under Motor Vehicles Act for not possessing driving licence has been registered as against the driver of the first respondent. The learned Tribunal came to a conclusion that in case of absence of valid driving licence in the name of driver of the first respondent at the time of the accident certainly the jurisdictional police would have registered while filing the final report and would have framed charges as against the first respondent's driver for the offences under Motor Vehicles Act for violations of provisions of Motor Vehicles Act during driving the vehicle on 01.05.2008. In the absence of any such charge framed as against the driver of the first respondent, the learned Tribunal came to a conclusion that the second respondent has miserably failed in proving that the driver never possessed valid driving licence as on 01.05.2008.

12.The learned Tribunal has also taken into account of Ex.R2 a letter given by RTO certifying that the driver Ramachandran possessed valid driving licence, Ex.R3 which is copy of the driving licence. On the



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basis of Ex.R2 and Ex.R3, the learned Tribunal has observed that the driver possessed driving licence dated 03.08.2014 for driving LMV vehicles. That part it was also taken note that he also possessed HMV vehicles licence with driving badge dated 06.12.1994.

13.In view of the same, though there is no illegality and irregularity in the finding of the learned Tribunal, when the second respondent insurance company has conspicuously failed to prove that the first respondent's driver did not possess valid driving licence on 01.05.2008. The fact that no charges were framed against him by the jurisdictional police in the connected criminal case under any of the provision of Motor Vehicles Act, 1988 for the violations of the provisions of Motor Vehicles Act and the relevant rules is also significant. The evidence deposed by R.W.1 one Gunabai, Junior Assistant of the Regional Transport Office, Dindigul by marking Ex.R2 and Ex.R3 cannot be brushed aside without consideration.

14.However, a critical perusal of Ex.R2 and Ex.R3 would reveal that though the driver of the first respondent possessed LMV vehicles



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licence for the period between 12.08.1998 and 11.08.2001, on the particular date of accident on 01.05.2008 he failed to renew his licence and he had no valid driving licence. The said factum cannot be left aloof closing the eyes to the disadvantage of the second respondent.

15.In view of the same, without interfering with the quantum of the compensation awarded to the petitioners, this Court is inclined to modify the finding of the learned Tribunal directing both the respondents pay the award amount to the petitioners, by directing the appellant to pay the award amount to the petitioners and thereafter, recover the same from the first respondent.

16.The appellant/insurance company directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order and thereafter, the appellant/insurance company is entitled to recover the same from the first respondent. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw the award amount with



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proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The respondents 1 and 2/claimants are not entitled for interest for the default period, if there is any.

17. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Motor Accidents Claims Tribunal,
(Additional District and Sessions Judge), Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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