



C.M.A.(MD)No.463 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **03.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 463 of 2024
and C.M.P(MD)No.6201 of 2024

The Branch Manager,
The Oriental Insurance Company Limited,
No.16/18, Suppammal Theru,
Near Aathiparasakthi Kovil,
Pollachi

... Appellant/2nd Respondent

Vs.

1.Pushpavalli
2.Naveenkumar
3.Nandhini
4.Nalini

5.Ramamirtham

...Respondents 1 to 5/Petitioners 1 to 5

6.Karthickraja

...6thRespondent/1st Respondent

7.Pasumpon

..7th Respondent/3rd Respondents

8.The Branch Manager,

The New India Assurance Company Limited,

Poonthamalli,

D.O.(713200) No.11,

Sannathi Veedhi, 2nd Floor,

Poonthamalli,

Chennai – 56

(Policy No.71320031210100008521) ...8th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the

Motor Vehicles Act, 1988, against the judgment and decree dated



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27.04.2023 passed in M.C.O.P.No.624 of 2022 on the file of the Motor

Accident Claims Tribunal Judge/Principal District Court, Pudukkottai.

For Appellant	: Mr.A.Ilango
For R1 to R5	: Mr.P.Ganapathi Subramanian
For R8	: Mr.C.Karthik
For R6	: No appearance
R7	: Dispensed with

JUDGMENT

The instant appeal has been filed challenging the finding of the Tribunal holding the appellant liable to pay compensation jointly and severally with the insured.

2. The respondents 1 to 5 filed a claim petition stating that while one Venkatesan, the husband of the 1st claimant and the father of the claimants 2 to 4, was travelling as a pillion rider in a two-wheeler, the tipper lorry insured with the appellant came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, he succumbed to the fatal injuries.

3. The appellant filed a counter stating that the accident did not take place due to the rash and negligent driving of the insured vehicle; that the driver of the insured vehicle did not possess a valid license to



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drive a heavy motor vehicle; and therefore, they are not liable to pay compensation.

4. The other respondents, namely, the owner of the two wheeler and the insurer submitted that the accident took place due to the negligent driving of the insured vehicle.

5. The claimants examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.12. The appellant examined one witness as R.W.1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the appellant was liable to pay compensation jointly and severally along with the 6th respondent herein/the owner of the vehicle and determined the compensation at Rs. 21,73,880/-.

7. The learned counsel for the appellant submitted that Ex.P.5, the license of the driver of the insured vehicle would show that he had a license only to drive a Light Motor Vehicle (LMV) and hence, he was not eligible to drive the tipper lorry, a heavy vehicle insured with the



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appellant; that since there is a violation of terms of the contract of insurance, the appellant would be entitled to pay and recover the compensation amount.

8. Though notice was served to the 6th respondent, none entered appearance. In fact, the 6th respondent remained ex parte before the Tribunal.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5.

10. The only point for consideration in the instant appeal is whether the Tribunal was right in directing the appellant to pay compensation to the respondents 1 to 5 jointly or severally along with the 6th respondent herein.

11. The records would reveal that the claimants marked driving license of the driver of the offending vehicle as Ex.P.5, which suggests that the driver had a license to drive a Light Motor Vehicle(LMV). The vehicle insured with the appellant is a Heavy Goods Vehicle(HGV),



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which is revealed from Ex.P.3, R.C.Book of the insured vehicle. Thus, the appellant had established that the driver of the insured vehicle did not possess a valid license to drive a Heavy Goods Vehicle and there is a violation of the terms of contract of insurance.

12. The finding of the Tribunal is also challenged on the ground that the deceased did not wear helmet and has also violated the law by allowing three persons to travel in the vehicle and hence he had contributed to the accident. The Tribunal, after considering the evidence, held that the appellant had not established the fact that the deceased did not wear helmet and that the accident took place only because three persons travelled in the two wheeler. Therefore, this Court is of the view that the finding of the Tribunal is in accordance with law on this aspect and therefore, no interference is called for.

13. This Court is of the view that the appellant shall pay the compensation amount at the first instance and thereafter shall be at liberty to recover the same from the 6th respondent, the owner of the insured vehicle. Therefore, the appellant is directed to deposit the compensation amount with interest as awarded by the Tribunal within a



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period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount as per the apportionment fixed by the Tribunal by filing a suitable application.

14. In the result, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.09.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To
1.Motor Accident Claims Tribunal Judge/Principal District Court,
Pudukkottai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No. 463 of 2024
and C.M.P(MD)No.6201 of 2024

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