BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.634 of 2024
and **C.M.P.(MD) No.7753 of 2024**
and
Cros.Obj.(MD) No.39 of 2024

C.M.A.(MD) No.634 of 2024

The New India Assurance Company Ltd.,
Rep. by its Divisional Manager,
No.3, Main Road,
Dindigul - 624 001. ... Appellant

Vs.

1.Saraswathi
W/o. Late.Vellaiyan

2.Lakshmi
W/o.Raju

3.Shanthi
W/o.Murugan

4.Shankar
S/o.Late.Vellaiyan

5.Malliga
D/o.Late.Vellaiyan

6.Selvanathan
S/o.Selvakumarasamy ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 11.09.2023 made in M.C.O.P.No.49 of 2022 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul.

For Appellant : Mr.S.Sankar

For R1 to R5 : Mr.R.Thangapandian

For R6 : No appearance

Cros.Obj.(MD) No.39 of 2024

1.Saraswathi
W/o.late.Vellaiyan

2.Lakshmi
W/o.Raju

3.Shanthi
W/o.Murugan

4.Shankar
S/o.Late.Vellaiyan

5.Malliga
D/o.Late.Vellaiyan

... Cross-Objectors

Vs.

1.The New India Assurance Company Ltd.,
Rep. by its Divisional Manager,
No.3, Main Road,
Dindigul – 624 001.

2.Selvanathan
S/o.Selvakumarasamy ... Respondents

Prayer:- Cross-Objection filed under Order XLI Rule 22(1) of Civil Procedure Code to enhance the compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Dindigul, *vide* its Judgment and Decree dated 11.09.2023 passed in M.C.O.P.No.49 of 2022.

For Cross-Objectors : Mr.R.Thangapandian

For R1 : Mr.S.Sankar

For R2 : No appearance

*****

COMMON JUDGMENT

The Insurance Company has filed the instant appeal challenging the finding on the liability and the quantum of compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Dindigul, *vide* its Judgment and Decree dated 11.09.2023 passed in M.C.O.P.No.49 of 2022.

2. The claimants have filed the instant cross objection seeking enhancement of compensation awarded by the Tribunal.

3. The first to fifth respondents in the C.M.A./cross-objectors filed a claim petition before the Tribunal, stating that on 19.10.2021, at about 10.30 a.m., while the deceased was riding his two-wheeler bearing Registration No.TN-58-AA-2203, the driver of the car bearing Registration No.TN-33-AH-4414 insured with the appellant, came in a rash and negligent manner and collided with the two-wheeler, as a result of which the deceased sustained fatal injuries.

4. The owner of the car remained *ex parte* before the Tribunal. The appellant filed a counter before the Tribunal, stating that the accident took place due to the rash and negligence of the deceased and that, in any case, the driver of the insured vehicle did not have a valid driving licence, and therefore, they are not liable to pay compensation.

5. The claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P19. The appellant, Insurance Company, examined R.W.1 and R.W.2 and

marked Exs.R1 to R3. The authorization letter issued by R.T.O. was marked as Ex.X1, and the driving licence of the insured was marked as Ex.X2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the insured vehicle and directed the appellant, Insurance Company, to pay the compensation of Rs.9,71,200/-.

7. The learned counsel for the appellant, Insurance company, submitted that the driver of the insured vehicle did not have a valid driving licence at the time of the accident, and hence, the appellant should have been totally exonerated by the Tribunal and relied on the Judgment of this Court in the case of **The Divisional Manager, United India Insurance Co. Ltd.** Vs. **M.Suresh and another**, dated 01.10.2020, passed in C.M.A.No.2900 of 2015, and also relied on the Judgment of the Delhi High Court in the case of **Baksha Ram** Vs. **Smt.Heena and others**, dated 12.07.2021, passed in MAC.APP. No.201 of 2021.

8. The learned counsel for the claimants, per contra, submitted that driving without a valid licence would be a breach of policy conditions and and that though the appellant may not be liable to pay compensation, the appellant can be directed to pay and recover the compensation amount and relied on the Judgment of this Court in the case of **Govindasamy and another** Vs. **Ramamurthy and another**, reported in 2023 (1) TN MAC 739.

9. The learned counsel further submitted that though the claimants had established before the Tribunal that the deceased was an agriculturist and also a flower vendor, the Tribunal had taken a meagre notional income of Rs.8,000/- per month, which requires enhancement.

10. The points for consideration in the instant appeal and the cross objection are: (a) whether the finding of the Tribunal holding that the appellant is liable to pay compensation is justified; and (b) whether the compensation awarded by the Tribunal is just and reasonable.

11. As regards the first point, the contention of the learned counsel for the appellant is that the driver of the insured vehicle did not have a driving licence at the time of the accident. The appellant had established before the Tribunal that the licence expired in the year 2018 and renewed only in the year 2021. Therefore, the fact that the driver of the insured vehicle did not have a driving licence has been established before the Tribunal. However, the question is, in view of the breach of terms of contract of insurance, whether the appellant can be directed to pay and recover the compensation amount from the owner of the insured vehicle.

12. In **M.Suresh**'s case relied on by the learned counsel for the appellant (*supra*), this Court, in the facts of that case, had held that the principle of pay and recovery in case of violation of policy conditions would apply depending on the facts and circumstances of each case. In that case, the insured did not have any driving licence at all. But, in the present case, it is seen that, admittedly, the insured had a licence earlier, which expired in the year 2018 and was later renewed in the year 2021 after the accident. Driving a vehicle without a valid driving licence is certainly a violation. Thus, this Court is of the view that the direction to

pay and recover can be ordered in view of the principles of law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited** Vs. **Swaran Singh**, reported in 2004 ACJ 1 : (2004) 3 SCC 297. Therefore, the appellant shall satisfy the award amount at the first instance and is thereafter at liberty to recover the same from the owner of the insured vehicle, namely, the sixth respondent in C.M.A./second respondent in Cros.Obj.

13. As regards the quantum of compensation, it is seen that the claimants had established through the evidence of P.W.1 that the deceased was an agriculturist and was also working as a flower vendor. However, no documentary proof was produced by the claimants either to establish the avocation or the income of the deceased. The accident took place in the year 2021. Considering the age of the deceased, the evidence of P.W. 1, year of the accident, and the avocation, this Court is of the view that the notional income fixed by the Tribunal is meagre and can be enhanced to Rs.15,000/- per month. The deceased was 55 years old at the time of the accident. Therefore, 10% of the income has to be added towards future prospects. The multiplier applicable is 11. In view of the number of

dependents, ¼ has to be deducted towards personal expenses. Therefore, the compensation under the head 'loss of dependency' would be **Rs.16,33,500/-** [Rs.15,000/- + 10% x 12 x 11 x ¾].

14. The compensation under the head 'loss of love and affection' to the second to fifth claimants is enhanced to Rs.1,60,000/- [40,000 x 4]. The compensation under the other heads is just and reasonable and is therefore confirmed. The total compensation is modified as follows:

Sl. No	***Heads***	***Amount awarded by the Tribunal***	***Amount awarded by this Court***	***Award confirmed, enhanced or reduced***
1	Loss of Dependency	Rs.8,71,200/-	Rs.16,33,500/-	Enhanced
2	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Loss of Love and Affection	Rs. 40,000/-	Rs. 1,60,000/-	Enhanced
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
Total		**Rs.9,71,200/-**	**Rs.18,53,500/-**	Enhanced by **Rs.8,82,300/-**

15. The Insurance Company [the appellant in C.M.A./the first respondent in Cros.Obj.] is directed to deposit the enhanced compensation

of Rs.18,53,500/- together with interest at 7.5% per annum from the date of the claim petition, i.e., 07.01.2022, till the date of the realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

16. On such deposit, the claimants (the first to fifth respondents in C.M.A/cross-objectors) are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

17. The claimants (the first to fifth respondents in C.M.A/cross-objectors) are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

18. The Insurance Company [the appellant in C.M.A./the first respondent in Cros.Obj.] is at liberty to recover the compensation amount from the owner of the insured vehicle, namely, the sixth respondent in C.M.A./second respondent in Cros.Obj., as per the guidelines issued by

the Hon'ble Supreme Court in the case of **Nanjappa** Vs. **State of Karnataka**, reported in 2015 (1) SCC 550.

19. In the result, C.M.A.(MD) No.634 of 2024 and Cross Objection (MD) No.39 of 2024 are partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Dindigul,
Dindigul District.

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

SUNDER MOHAN, J.

JEN

C.M.A.(MD) No.634 of 2024
and C.M.P.(MD) No.7753 of 2024
and
Cros.Obj.(MD) No.39 of 2024

04.09.2024