



C.M.A(MD)Nos.919 and 920 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

and

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)Nos.919 and 920 of 2021

1.Shenbagavalli

2.Minor R.Dharsana Srinithi

3.Mani

Muthulakshmi (died) : Appellants in C.M.A(MD)No.919 of 2021

Sathishkumar : Appellant in C.M.A(MD)No.920 of 2021

Vs.

1.M.Sivakumar

2.HDFC ERGO General Insurance Company Limited,

3rd Floor, Thiripura Arcade No.75A,

Thiruvananthapuram High Road,

Palayamkottai, Tirunelveli -627 002. : Respondents in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Common Judgment and Decree dated 27.01.2021 passed in M.C.O.P.Nos.541 and 545 of 2016 on the file of the Motor Accident Claims Tribunal (I Additional District Judge), Thoothukudi.



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In both the appeals;

For Appellant : Mr.I.Robert Chandrakumar

For Respondents : Mr.S.Srinivasa Raghavan for R2

COMMON JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN., J.**]

Being aggrieved over the common award passed by the Motor Accident Claims Tribunal (I Additional District Judge), Thoothukudi. in M.C.O.P.Nos.541 and 545 of 2016, dated 27.01.2021, the claimants have filed these appeals.

2.The appellants are the claimants in MCOP Nos.541 and 545 of 2016 and the first respondent is the owner and the second respondent is the insurer of the offending vehicle. The appellants in CMA(MD)No.919 of 2021 has filed the claim petition in M.C.O.P.No.541 of 2016, claiming a sum of Rs.14,23,00,000/- (*Rupees Fourteen Crores and Twenty Three Lakhs only*) as compensation for the death of the husband of the first appellant, father of the second appellant and the son of the appellants 3 and 4 in the accident that occurred on 07.07.2016. By the order, dated

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27.01.2021, the Tribunal has awarded a sum of Rs.2,11,16,400/- (*Rupees Two Crores Eleven Lakhs Sixteen Thousand and Four Hundred only*) as compensation. The appellant in CMA(MD)No.920 of 2021 has filed the claim petition in M.C.O.P.No.545 of 2016, claiming a sum of Rs.1,40,000/- (*Rupees One Lakh and Forty Thousand only*) as compensation for the injuries sustained by him in the same accident. By the order, dated 27.01.2021, the Tribunal has awarded a sum of Rs.52,728/- (*Rupees Fifty Two Thousand Seven Hundred and Twenty Eight only*) as compensation.

3.Facts of the Case:-

According to the appellants, on 07.07.2016 at about 19.30 hours, the appellant in CMA(MD).No.920 of 2021, namely, Sathishkumar rode a motorcycle bearing Reg.No.69-AJ-5805, wherein, the deceased Rajendraprasad travelled as pillion rider. When the said motorcycle reached near *Salt and Chemical Salt Limited*, South Beach Road, Thoothukudi, the first respondent in CMA(MD).No.919 and 920 of 2021, drove his car bearing Reg.No.TN69-PP-1444, with high speed, in a rash and negligent manner and dashed against the motorcycle. In the impact,



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the pillion rider Rajendraprasad died on the spot and the appellant Sathishkumar sustained grievous injuries. The accident occurred only due to the rash and negligent driving of the driver of the car. The first respondent is the owner and the second respondent is the insurer of the offending car. Therefore, the legal heirs of the deceased Rajendraprasad filed the claim petition in M.C.O.P.No.541 of 2016 claiming a sum of Rs.14,23,00,000/- as compensation. The injured appellant Sathishkumar filed the claim petition in M.C.O.P.No.545 of 2016, claiming a sum of Rs.1,40,000/- as compensation.

4.The first respondent filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not take place as alleged by the claimants in the petition. The accident had occurred only due to the negligence of the appellant Sathishkumar. The first respondent's vehicle was insured with the second respondent Insurance Company and hence, the second respondent is liable to pay compensation.



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5.The second respondent Insurance company has also filed a counter denying the averments made in the affidavit and they have specifically stated that driver of the offending vehicle did not have a driving licence and the first respondent has violated the policy condition. Hence, the second respondent is not liable to pay compensation.

6. Before the Tribunal, on the side of the appellants, the wife of the deceased was examined as P.W.1 and the injured appellant examined himself as P.W.2 and marked 42 documents as Exs.P1 to P42. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R7 were examined. Besides, Ex.X1 and X2 were marked.

7.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellants and the respondents held that the accident occurred only due to the rash and negligent driving by the driver-cum-owner of the car. Since the driver of the car did not have driving licence at the time of accident, the Tribunal directed the first respondent/owner of the car, to pay a sum of



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Rs.2,11,16,400/- to the claimants in M.C.O.P.No.541 of 2021 and

Rs.52,728/- to the claimant in M.C.O.P.No.545 of 2021. The Tribunal

awarded the compensation under the following heads in both MCOPs:-

M.C.O.P.No.541/ 2016		
Sl. No.	Heads	Amount in Rupees
1	Loss of dependency	2,09,66,400/-
2	Loss of consortium (1 st claimant)	40,000/-
3	Loss of parental consortium (2 nd claimant)	40,000/-
4	Loss of Filial Consortium (3 rd claimant)	40,000/-
5	Los of Estate	15,000/-
6	Funeral Expenses	15,000/-
Total		2,11,16,400/-

M.C.O.P.No.545/ 2016		
Sl.No.	Heads	Amount in Rupees
1	Pain and suffering	20,000/-
2	Transport Expenses	3,000/-
3	Nourishment	3,000/-
4	For damage of the two wheeler	26,728/-
Total		52,728/-

Challenging the finding that the first respondent/owner of the vehicle, shall pay the compensation, the present appeals have been filed by the claimants and they have not disputed the quantum of compensation.



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8.Submission of the learned counsel for the appellants:

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8.1. According to the appellants, the Tribunal erred in exonerating the second respondent Insurance Company from the payment of compensation on the ground that the driver of the first respondent did not hold valid driving licence without applying the principle of pay and recovery as per law laid down by the Hon'ble Supreme Court in the following cases:

8.1.1.In the case of *National Insurance company Ltd. v. Swaran Singh and others* reported in (2004) 3 SCC 297

8.1.2.In the case of *Shamanna and another Vs. The Divisional Manager, Oriental Insurance Company Limited and others* reported in 2018 ACJ 2163: CDJ 2018 SC 816;

8.1.3.In the case of *Parminder Singh Vs. New India Assurance Company Limited* reported in AIR 2019 SC 3128: CDJ 2019 SC 747;

Therefore, he seeks to modify the award.

8.2.The learned counsel for the appellants further submitted that the Tribunal failed to consider that the Motor Vehicles Act is a beneficial legislation and the victims, who are third parties and are in no way



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connected the accident, should not be penalized. According to appellants, the finding of the Tribunal in this regard has to be set aside.

9.Submission of the learned counsel for the 2nd respondent:

The learned counsel for the second respondent/Insurance Company submitted that the driver of the car did not have the driving licence and the same amounts to the breach of policy and hence, the learned Tribunal Judge correctly exonerated the insurance company. Therefore, he seeks for confirmation of the finding of the Tribunal and seeks for dismissal of these appeals.

10.The notice on the owner of the vehicle even though served, has not appeared and hence, this Court considered the rival submissions and perused the impugned order and the materials available on record.

11. In these appeals, the claimants restricted their submission relating to the pay and recovery. Hence, the following point alone arises for consideration of these appeals:



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11.1.“Whether the Tribunal is correct in not passing the award of pay and recovery in this peculiar circumstances of the case.

12. Discussion on Liability to pay the compensation :

The appellants are the claimants in M.C.O.P.No.541 of 2016 and 545 of 2016. The claimants in M.C.O.P.No.541 of 2016 are the defendants of the deceased Rajendra Prasad and the claimants in M.C.O.P.No.545 of 2016 is rider of the two wheeler bearing registration No.TN 69 AJ 5805. The said two wheeler while ridden by the Sathiskumar along with the pillion rider deceased/Rajendra Prasad on 07.07.2016 at 07.30 p.m., in the Thoothukudi Beach Road, north to south direction, the car, belonging to the first respondent came in the opposite direction and dashed against the two wheeler and hence, the deceased/Rajendra Prasad died and Sathiskumar sustained injuries. The Tribunal has held that the accident happened due to the rash and negligent driving of the first respondent namely, the driver of the car. The said car driver had no valid driving licence. In the said circumstances, as held by the Hon'ble three judges bench of the Supreme Court, in the case of *National Insurance Company Ltd. v. Swaran Singh and others* reported



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in (2004) 3SCC 297, the learned Tribunal Judge ought to have applied the theory of pay and recovery. But, the learned Tribunal Judge has not applied the said principle and committed error in not issuing the direction of pay and recovery as per law laid down by the Hon'ble Supreme Court. The claimants are the third party to the car. The insurance was in force. Therefore, the learned Tribunal Judge considering the object of the Motor Vehicle Act, its beneficial legislation and the victims are the third parties, ought to have applied “pay and recovery”. The Hon'ble Supreme Court reiterated the pay and recovery in all the case of the third parties including the decision rendered in the cases of the *Shamanna and another Vs. The Divisional Manager, Oriental Insurance Company Limited and others* reported in 2018 ACJ 2163: CDJ 2018 SC 816 and *Parminder Singh Vs. New India Assurance Company Limited* reported in AIR 2019 SC 3128: CDJ 2019 SC 747. Therefore, this Court inclines to accept the argument of the learned counsel for the claimants and modified the award passed in M.C.O.P.Nos.541 and 545 of 2016 with direction of pay and recovery.



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13. Accordingly, these appeals are allowed and the M.C.O.P.Nos.

541 and 545 of 2016 is modified as follows:-

13.1. The second respondent/insurance company is hereby directed to pay the award amount passed in M.C.O.P.Nos.541 and 545 of 2016 with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this Judgment at the first instance and thereafter, recover the same from the owner of the insured vehicle in the same execution proceedings as stated in the Paragraph 7 of the Hon'ble Supreme Court Judgment in the case of ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others***, reported in ***I(2004) ACC 524 (SC)***.

13.2. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal together with proportionate interest and costs.

13.3. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor attains the age of

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majority and the first claimant/Shenbagavalli, who is the guardian of the minor claimant, is permitted to withdraw the interest once in six months directly from the bank. There shall be no order as to costs.

[V.B.S.J.,] [K.K.R.K.J.,]
20.02.2024

Index :Yes/No
Internet :Yes/No
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To

1.The Motor Accident Claims Tribunal
(I Additional District Judge), Thoothukudi.

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



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V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,

skn/sbn

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Dated:20.02.2024