



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)No.554 of 2024
and
C.M.P(MD)No.7077 of 2024**

Reliance General Insurance,
Office No.10/4/4-Second Floor, Thaha Plaza,
South Bye Pass Road,
Vannarpettai,
Tirunelveli – 627 003.

... Appellant/Second Respondent

.Vs.

V.Thangaiah(died)

1.T.Radha

...Ist Respondent/Petitioner

2.K.Subha

...Second Respondent/Ist Respondent

3.V.Samudram

...Third Respondent/Third Respondents

4.The United India Insurance Company Limited,
No.10, First Floor BSNL CSC Building,
Urkad Road, Ambasamudram,
Tirunelveli – 627 401.

...4th Respondent/4th Respondent



WEB COPY

PRAYER: Civil Miscellaneous Appeal filed under Section 176 of the Motor Vehicles Act against the award made in M.C.O.P.No.6 of 2019, dated 3.7.2023, on the file of the Motor Accidents Claims Tribunal Judge(Subordinate Judge),Ambasamudram.

For Appellant : Ms.K.R.Shivashankari

For Respondents : No appearance
1 and 2

For Respondent-4 :Mr.C.Jawahar Ravindran

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J**)

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.6 of 2019, dated 3.7.2023, on the file of the Motor Accidents Claims Tribunal Judge(Subordinate Judge),Ambasamudram.

2.The Insurance Company is the appellant. The case of the claimant is that the first respondent is the father of the deceased Vignesh and the second respondent is his mother. . On 28.4.2018 at about 16.00 hours at Papanasam



WEB COPY

Ambasamudram Road, while the deceased was driving the vehicle bearing Registration No. TN 59 V 0747 Boxer proceeding in West to east direction along with one Arunkumar as pillion rider to pick up his sister from Ambasamudram Railway Station, the vehicle bearing Registration No. TN 76 AW 3045 Tipper Vehicle proceeding from east to west driven by its driver in a rash and negligent manner dashed against the above said vehicle and cause the death. In this regard a case was registered in Crime No.187 of 2018, on the file of Ambasamudram Police and the same is pending on the file of learned Judicial Magistrate, Ambasamudram. At the time of accident, the deceased was aged about 23 years and employed as Company Trade Apprentice in a private company and earning a sum of Rs.14,739/- and thus, claimed a sum of Rs.75 lakhs as compensation.

3.The case of the respondents 1 to 4 therein is that the claim petition has been filed suppressing the material facts and due to the rash and negligent driving of the deceased vignesh, the accident had occurred and the driver of the first respondent is not responsible for the accident and prayed for dismissal of the claim petition.



WEB COPY

4. The learned counsel for the appellant Insurance Company submitted that the driver of the insured vehicle is not holding due, valid and effective driving licence to drive the vehicle at the time of accident. The driver of the insured vehicle at the time of accident is without any valid driving licence drove the said vehicle is in contravention of the provisions of the Motor Vehicles Act and the Motor Vehicle Rules. Under Section 37 of the Motor Vehicles Act, the person holding valid and subsisting driving licence should drive the vehicle and further he would submit that the driver of the insured vehicle is not the cause for the accident.

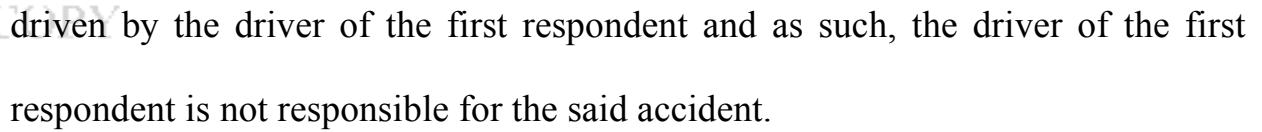
5. As far as the quantum of compensation is concerned, the claimant produced the salary certificate Ex.P12. As per Ex.P12, the monthly salary of the deceased at the time of accident is Rs.14,739/- but whereas, the Tribunal fixed the monthly income at Rs.18,000/- which is against the provisions of law and also Ex.P12 shows only as Stipend Certificate and there is no permanent employment and therefore the Tribunal ought have fixed the notional income only below Rs.14,000/- and not at Rs.18,000/-. Further he would submit that the Insurance Company is not liable to indemnify on behalf of the owner of the



WEB COPY

offending vehicle bearing Registration No.TN 76 AW 3045 when the driver of the insured vehicle was not holding duly valid and effective driving licence on the date of the alleged accident and hence, there is no direct liability on the part of the appellant to pay any compensation amount and only the owner of the alleged insured vehicle is liable to pay the compensation. The initial burden of proving that the driver of the insured vehicle was not holding duly valid and effective driving licence at the time of accident and the onus is shifted on the owner of the vehicle to prove that he is possessing valid driving licence and he has not breached the conditions of policy and the quantum fixed by the Tribunal is on higher side and it does not reflect the just and fair compensation. Therefore the appeal is liable to be allowed and the judgment and decree passed by the Tribunal is liable to be set aside.

6.Though the accident is not in dispute and the deceased died due to the accident is also not in dispute,the specific case of the appellant is that the Petitioner has suppressed the true facts to file the claim petition. The accident happened on 28.4.2018 on account of the fact that the deceased without following the basic traffic rules drove the vehicle and dashed against the lorry



7. The further case of the appellant is that the insurance coverage of the said vehicle bearing Registration No. TN 76 AW 3045 owned by the first respondent is not in force at the time of accident. Therefore, the appellant is not liable to indemnify the first respondent. The driver of the vehicle bearing Registration as aforesaid was not having valid and effective driving licence at the time of accident and the first respondent handed over the possession of the vehicle to the said driver and therefore, the appellant is not liable to indemnify the same.

8. Though the learned Tribunal ordered for "Pay and recovery" for violation of policy condition, however, the learned Tribunal failed to consider the fact that the accident was due to the rash and negligent driving of the deceased and therefore the appellant is not liable to pay the quantum as fixed by the Tribunal which is on higher side.



WEB COPY

9. As already stated, the accident is admitted and the death of the deceased due to the accidental injury is also not in dispute. The appellant has taken a defense that the accident is due to the rash and negligent driving of the deceased and the appellant has not examined the driver of the offending vehicle bearing Registration No. TN 76 AW 3045 and that a criminal case was also registered against him in Crime No.187/2018 under Section 279 and 304(A) of IPC and therefore the driver of the above said vehicle has not filed any case. Though he has stated that the deceased only came with rash and negligence and dashed against the offending vehicle bearing Registration No. TN 76 AW 3045 but he was not examined as a witness and the eye witness was examined on the said of the claimant. He has categorically stated about the manner of the accident and nothing was elucidated during the cross examination. Therefore once the claimant pleaded that the accident had occurred due to the rash and negligent driving of the offending vehicle bearing Registration No. TN 76 AW 3045 and in order to prove the same, he also examined the eye witness, the onus has been shifted to the respondent/appellant herein, whereas in this case, though a case was registered against the driver of the offending vehicle, that may not be the sole ground to fix the liability on him, but however, no witness was examined on their



WEB COPY

side, even otherwise, the driver of the offending vehicle was also not examined.

Therefore there is no contra evidence to the claimant's evidence regarding the manner of the accident and negligence on the part of the driver of the offending vehicle. Therefore from the perusal of oral and documentary evidence and from the evidence of P.W.2, this Court finds that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, which is insured with the appellant at the time of accident. From the oral evidence, it is seen that there is only violation of policy condition. The Tribunal has also ordered for pay and recovery. This Court, as an appellate Court, a final court of fact finding Court, on reappraisal of evidence finds that the accident had happened only due to the rash and negligent driving of the driver of the offending vehicle.

10. As far as the quantum of compensation is concerned, admittedly, the deceased at the time of accident was working as Apprentice and getting stipend of Rs.14,739/-. Ex.P12 clearly shows that he was getting stipend during the relevant point of time. Since he is a qualified person getting stipend, soon after completing the same, he would get a good job and he would earn not less than



WEB COPY

Rs.18,000/- and the Tribunal fixed Rs.18,000/- as monthly income. Since the deceased died as a bachelor and mother is the legal heir at the time of death of the deceased and as the deceased is 23 years at the time of accident, considering the qualification and also the scope of employment and source of income, the Tribunal has fixed the notional income at Rs.18,000/- which is not on higher side and seems to be reasonable. At the time of accident, the deceased was aged 23 years and the Tribunal adopted multiplier of 18 and 50% of his income was deducted towards personal expenditure, as he was a bachelor at the time of accident. Further considering the age and future prospectus, following the decision of the Honourable Apex Court in *National Insurance Company Limited .vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC)*, 40% of the income is added towards future prospectus fixed the loss of dependency at Rs.27,21,600, which seems to be just and reasonable. A Perusal of the award under other heads also seems to be just and reasonable, which in the considered opinion of this Court is not on higher side. Therefore for all these reasons, this Court finds no merit in the appeal and the appeal is liable to be dismissed.



WEB COPY

11. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the award of the Tribunal. No costs. Consequently connected Miscellaneous Petition is closed.

(P.V.,J.) (K.K.R.K.,J.)
13.08.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

1. The Motor Accidents Claims Tribunal,
(Subordinate Judge),
Ambasamudram.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



P.VELMURUGAN,J.
and
K.K.RAMAKRISHNAN,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.554 of 2024
and
C.M.P(MD)No.7077 of 2024

13.08.2024