IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2025

Pronounced on : 25.11.2025

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.1849 of 2022
and
C.M.P.No.13385 of 2022

National Insurance Company Limited,
Divisional Office,
Court Street, Tiruppur. ... Appellant / 3rd respondent

Vs

1.Panimalar
2.Minor M.Ugesh
3.Minor Vikashini ... Respondents / Petitioners 1 to 3
4.Dhanasekaran ... Respondent / 1st Respondent
5.Sivasamy ... Respondent / 2nd Respondent

This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment passed in MACT O.P.No.714 of 2017 dated 29.03.2019 on the file of the Motor Accident

Claim Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr.N.B.Sureka

For Respondents : Mr.MA.P.Thangavel for RR1 to 3
No Appearance for R4
R5 – set exparte

JUDGMENT

Appeal filed by the Insurance company against the award passed by the Motor Accident Claims Tribunal at Tiruppur in M.A.C.O.P.No.714 of 2017 dated 29.03.2019.

2.The petition for compensation filed by the wife and two minor children of the accident victim seeking compensation of Rs.25,00,000/- with interest against the driver, owner of the offending vehicle and the insurer of the vehicle.

3.According to the claimants, on 27.11.2016 at about 7.20 P.M., the husband of the 1st claimant and father of the minor claimants 2 and 3 while proceeding in his Hero Honda Passion Motor Cycle bearing Reg. No.TN-40-D-7972 on Sathy to Mettupalayam Road, near Viscose bus stop, a JCB bearing Reg. No.KL-39-6829 proceeding in front of the deceased vehicle got punctured and abruptly stopped without any indication by its driver. Due to sudden brake applied by the JCB driver, Muthuraja dashed against the bucket of the JCB and thrown on the road sustaining severe head injury and injury all over the body. He died on the spot. The claimants being his dependants stating that at the time of accident, Muthuraja was working as a Supervisor in a Garments Company and earning more than Rs.20,000/- as salary and bonus. He was 40 years old at that time and he had a good future prospects. Hence, towards loss of earning and future prospects, loss of consortium and loss of love and affection, a sum of Rs.25,00,000/- claimed as compensation.

4.The Insurance Company contested the claim on the ground that, the accident occurred only due to the negligence of the deceased, who recklessly drove his two wheeler and dashed behind the JCB vehicle. The criminal case was registered against the deceased, for his negligent driving and the same was closed as abated, by misrepresentation claim petition has filed with false averment. The driver of the JCB had no valid driving licence and the Insurance Company is not liable to pay any compensation on behalf of the vehicle owner. The claim of compensation is exorbitant without any supporting document. Hence, the appeal deserves to be dismissed.

5.Before the Tribunal, on behalf of the claimants, the 1st claimant, Panimalar, was examined as PW-1. Three more witnesses were examined by the claimants to prove the accident and negligence of the JCB driver. Exs.P1 to P11 were marked on behalf of the claimants. On behalf of the respondents, three witnesses were examined and Exs.R1 to R10 were marked.

6.The Tribunal on considering the evidence held that as per the First Information Report Ex.P1, complaint was lodged against the driver of the JCB. The complainant is the 1st claimant. PW-2 is the co-worker of the deceased who was following him after the office hours had witnessed the accident and deposed in favour of the claimants. Though the police has closed the complaint as mistake of fact, considering the ocular evidence of PW-2 and the Motor Vehicle Inspection Report, the Tribunal held the JCB driver responsible for the accident. The pay slip of the deceased for the month of October 2016 taken as guidance for fixing the loss of earning. After adding 25% towards future prospects to the gross salary, Tribunal fixed Rs.22,086/- as monthly income and after applying multiplier 15 deducted 1/3 towards personal expenditure and awarded a sum of Rs.26,50,320/- towards loss of income. Following *Pranay Sethi* case for three claimants, loss of consortium Rs.1,20,000/- and for funeral expenses Rs.15,000/- with transport expense of Rs.5,000/- awarded. A total compensation of Rs.27,90,320/- fixed payable to the claimants with interest at 7.5% per annum from the date of filing the claim petition till the date of deposit. Taking into consideration, the driver of the JCB had no valid licence, the Tribunal had deducted 10% from the total compensation payable to the claimants.

7.In the appeal by the Insurance Company, it is contended that, the Tribunal having found that there is a policy violation by the insured, the entire award amount ought to have been fastened on the owner of the vehicle and its driver. Insurance company is not liable to indemnify the policy violator. The Court below fail to appreciate that PW-1 is an interested witness. Moreover, she an eye witness to the occurrence, so she is not competent to speak about the negligence. However, the Tribunal overlooked the closure report of the police after investigation and held the driver of the JCB was negligent.

8.When the JCB driver had no valid licence, the order of the Tribunal directing the Insurance Company to pay 90% of the compensation is contrary to the fundamental law of torts. The learned Tribunal failed to see that the deceased died due to head injury and was not wearing helmet. For his negligence, atleast 50% of the compensation ought to have been deducted.

9.The learned counsel appearing for the appellant submitted that when the fault is on the deceased and the driver of the JCB had no valid driving licence, the compensation awarded has to be set aside.

10.The learned counsel appearing for the respondents 1 to 3 submitted that First Information Report, given by the wife of the deceased, is based on the information given to the defacto complainant. PW-2 was following the deceased in his two wheeler and he had deposed about the accident and the negligence of the JCB driver. Therefore, for the default of the JCB driver not possessing valid driving licence, the Tribunal ought not to have deduct 10% compensation payable to the claimants. It should have ordered full compensation to the claimants payable by the Insurance Company and ought to have given liberty to the Insurance Company to recover 10% from the owner of the vehicle. Omission to do so is apparently illegal.

11.Heard the learned counsels appearing for the Insurance Company as appellant and for the claimants as respondents.

12.The nature of the accident is explained in the First Information Report as well as in the evidence of PW-2. It has occurred when the deceased riding his two wheeler hit the JCB moving ahead to him. It is contended by the Insurance Company, the deceased was not wearing helmet, therefore the head injury sustained became fatal to his life.

13.We find minor contradiction in the evidence and First Information Report. If PW-2 was present at the time of accident, there is no explanation from him why he did not give the complaint nor statement to the police regarding accident. The accidence case has been closed as mistake of fact alleging negligence on the part of the deceased. No protest petition after RCS notice issued to the first claimant intimating about the closure of the complaint. There is equally a contradictory evidence regarding negligence. Further, the failure of the deceased to wear helmet has contributed to his death.

14.In the said circumstances, we find that the 10% deduction by the trial Court for the JCB driver failure to hold driving licence and deducting the same from the compensation payable to the claimants is erroneous. However, the said deduction of 10% should have been for not wearing the helmet. In any event, the award amount payable to the claimants will not change. The appellant / Insurance Company is directed to deposit the entire award amount, if not already deposited. On such deposit, the claimants are permitted to withdraw the award amount. Hence, the appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.J) **(M.S.K.J)**

25.11.2025

smv
Index: Yes/No
Speaking order: Yes/No

DR. G.JAYACHANDRAN, J.

and

MUMMINENI SUDHEER KUMAR, J.

smv

To

The Motor Accidents Claims Tribunal,
I Additional District Judge, Tiruppur.

Pre-delivery Judgment in

C.M.A.No.1849 of 2022
and
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