BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2025**

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.126 of 2020

The Oriental Insurance Company Ltd.,
Tirunelveli,
Through its Branch Manager,
Tirunelveli. ... Appellant/3rd Respondent

Vs.

1.Lakshmi

2.Pitchumani

3.Arumugam

4.Seethalakshmi

5.Pramu Ammal ... Respondents/Petitioners 1-5

6.Jose Joseph

7.Mydeen @ Mydeen Abdulkhadar ... Respondents/Respondents 1&2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree, dated 14.10.2019 passed in M.C.O.P.No.448 of 2014 on the file of the Additional Motor Accidents Claims Tribunal, Additional Sub Court, Tenkasi.

For Appellant : Mr.C.Karthick

For R1 - R5 : Mr.R.T.Arivukumar

For R6 : Mr.L.Siva
for Mr.P.Bala Subramanian

For R7 : No Appearance

JUDGMENT

Challenging the award passed by the Additional Motor Accidents Claims Tribunal and Additional Sub Court, Tenkasi in M.C.O.P.No.448 of 2014 dated 14.10.2019, the Oriental Insurance Company has filed this civil miscellaneous appeal.

2. For the sake of convenience, the parties herein are referred to as per the ranking before the Tribunal.

3. The case is with respect to the accidental death of one Vel Chettiar who was aged 60 years. On 02.05.2014 at about 16.00 hrs, while the deceased was riding his cycle along Panbozhi Thirumalaikovil Road from east to west, the Ashok Leyland lorry bearing Registration No.K.L. 36A9424 was driven in a rash and negligent manner near Nagamman

Kovil and dashed against the said Vel Chettiar. As a result of which, the driver had driven the lorry over the head of the deceased and he died in the spot. The 1st respondent is the owner of the vehicle and the 2nd respondent is the driver who drove the said lorry at the time of accident. The Inspector of Police, Achampudur Police Station has registered an F.I.R in Crime No.90/2014 under Section 304(a) of I.P.C. Claiming compensation for the death of their father, the legal heirs of the deceased filed M.C.O.P.No.448 of 2014.

4. The learned Tribunal examined two witnesses on the side of the petitioner and had marked Exhibits P.1 to P.4. Three witnesses were examined on the side of the respondents and Exhibits R.1 to R.6 were marked on the side of the respondents. After hearing the arguments on either side and perusing the materials available on record, the learned Tribunal proceeded to pass an award under various heads, to a total amount of Rs.5,55,000/-. Challenging the said award, the 3rd respondent/ Insurance Company is before this Court by way of this appeal on two grounds.

5. The learned counsel appearing for the Insurance Company submitted that this appeal has been preferred on two grounds more particularly that the 2nd respondent driver had no driving license at the time of accident. The second ground for appeal according to him is that, the notional income of a person who was claimed to have been 60 years at the time of accident by the claimants, but it was fixed to be 70 years by the learned Tribunal, was taken as Rs.8,000/- relying upon the arguments of the claimants that he was working as a daily wager and the said amount should have been less than Rs.8,000/-. The learned counsel for the appellant drew my attention to the Motor Insurance Certificate cum Policy Schedule marked as Exhibit R.2 and pointed out that no claim of insurance is admissible if driving license is found to be fake or if the same is not valid even if the same is not in the knowledge of an insured person. The learned counsel for the appellant submitted that it was only because of the rash and negligent driving of one Mydeen/2nd respondent who drove the vehicle the accident had happened and the said Mydeen is the driver of the 1st respondent who do not have any driving license on the date of accident. Hence, the Tribunal erred by passing an award in favour of the claimants without holding the 1st respondent liable adopting the process of pay and recovery. The Tribunal ought to have passed an

award of pay and recovery and the appellant is not necessary to make the payment. However, the same should be recovered from the 1st respondent thereafter and that is the priority of the Insurance Company. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the 1st respondent/owner submitted that the name of the driver of the 1st respondent is Veeraperumal. He was examined as D.W.2 before the Tribunal. On the fateful day when the accident happened, his driver, namely Veeraperumal had actually parked the vehicle on the side of the road. However, without his knowledge, the said Maideen had driven the vehicle, which had resulted in the fatal death of Vel Chettiar. For which, the 1st respondent cannot be held liable by all means. That apart, he further submitted that his driver Veeraperumal on coming to know about the said accident, immediately lodged a complaint before the Achampudur Police Station and the said complaint, dated 02.05.2014 has been duly marked as Exhibit R.5. The Tribunal has duly appreciated the evidence deposed by the driver as D.W.2 and also taken note of it and had properly observed that the accident had happened only because of the rash and negligent driving of one Mydeen who was not the actual

driver of the 1st respondent and that the driver of the 1st respondent had parked the vehicle and without his knowledge and connivance, the said Mydeen had driven the vehicle, causing the said accidental death. Though the said Mydeen was not possessing the valid driving license, the same will not affect the effect of the policy of the insured i.e. the 1st respondent which was in subsistent on the date of accident. Considering the fact that the accident was not committed by the driver of the 1st respondent, the Tribunal correctly found it unnecessary to pass an order of pay and recovery. He prayed for dismissal of the appeal.

7. Heard Mr.C.Karthick, learned counsel for the appellant/Insurance Company, Mr.R.T.Arivu Kumar, learned counsel for the respondents 1 to 5/claimants and Mr.L.Siva, learned counsel for the 6th respondent/owner of the vehicle and carefully perused the materials available on record.

8. The appeal is neither on quantum nor on liability, but only on insisting for pay and recovery and on notional income. I am not inclined to interfere with the notional income which has been fixed by the Tribunal to a tune of Rs.8,000/- per month. However, since the Tribunal

had elaborately conducted the trial by examining as many as two witnesses on the side of the petitioners and three witnesses on the side of the respondents and duly appreciating the evidence deposed by the driver of the 1st respondent, namely Veeraperumal and marking the complaint given by him as Exhibit R.5, had diligently arrived at a conclusion by passing an award of Rs.5,55,000/- and directed the Insurance Company to comply with the award. I am of the considered opinion that since the Tribunal had arrived at a fair conclusion after elaborate adjudication and trial, the same need not be interfered with.

9. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

21.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Additional Motor Accidents Claims Tribunal,
Additional Sub Court,
Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

L.VICTORIA GOWRI,J.

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Judgment made in
C.M.A(MD)No.126 of 2020

21.02.2025