

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.580 of 2017

M/s.United India Insurance Co. Ltd.,
Divisional Office,
46-51, Kadpadi Road,
Vellore.

... Appellant/2nd respondent

versus

1. Gengammal (died)
2. Kalaivanan
3. Minor Hemavathy
4. Minor Vennila

(Minors are represented
by their mother Gengammal (now died))

... Respondents 1 to 4/Petitioners

5. Saravanan ... 5th respondent/1st respondent
(R5 remained ex parte before
the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.02.2006 made in O.P.No.485 of 2003 on the file of the Motor Accident Claims Tribunal (Principal District and Sessions Judge), Tiruvannamalai.

For Appellant	:	Mr.R.Ravichandran
		R1 Died
For R2 to R4	:	Mr.B.Jawahar
For R5	:	Ex parte

JUDGMENT

One Jayaraman, aged 52 years, working as a Telephone Technical Assistant, earning a sum of Rs.9,084/- per month, met with an accident on 01.10.2002, originally sustained head injury and succumbed to that injury later on 12-10-2002. Thereafter, the legal representatives, namely, wife, son and minor daughters of the deceased filed a claim petition in M.C.O.P.No.485 of 2003 before the Motor Accident Claims Tribunal (Principal District and Sessions Judge), Tiruvannamalai, claiming compensation of Rs.15,20,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.6,51,248/- as compensation payable by the Insurance Company with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

1.2. Challenging the findings on liability and quantum of compensation, the Insurance Company has filed this appeal.

2. When the matter came up for consideration, the learned counsel for the appellant submitted that the first claimant died during the pendency of the appeal and her legal representatives are respondents 2 to 4, who are already on record.

3. The question to be decided are: whether (a) the risk of a pillion rider was covered under Ex.P10-Policy or not; (b) the Insurance Company is liable to pay compensation or not and (c) quantum of the compensation awarded by the Tribunal is justifiable or not.

4. So far as the first issue is concerned, the case of the claimants is that the death of the deceased (pillion rider) is covered under Ex.P10-Policy.

4.1. It is not the case of the Insurance Company that the policy in this case is not a package policy. The liability of the insurance company in respect of the pillion rider is covered under the package policy. It is necessary to look into the proposition as held by the Hon'ble Supreme Court.

4.2. In the decision of the Apex Court in the case of National Insurance Company Ltd. vs. Balakrishnan & Another (Civil Appeal No.8163 of 2012, arising out of S.L.P.(Civil) No.1232 of 2012, dated 20th November 2012), the Apex Court has held as follows:

"20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-

wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car. "

As per the decision of the Apex Court (cited supra), the comprehensive/package policy of a two wheeler covers a pillion

rider, therefore, the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. Hence, the finding of the Tribunal that the Insurance Company is liable to pay compensation is correct.

5. So far as the quantum of compensation is concerned, the Tribunal has taken the age of the deceased as 52 years based on the postmortem report (Ex.P2) and fixed the monthly income of the deceased at Rs.7321/-. By deducting 1/3rd towards his personal expenses and adopting the multiplier of '11', the Tribunal has awarded a sum of Rs.6,44,248/- towards loss of dependency. The Tribunal has also awarded a sum of Rs.5,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. The total award was Rs.6,51,248/-.

5.1. The learned counsel appearing for the claimants would submit that the Tribunal has awarded only a sum of Rs.5,000/- to the wife towards the loss of consortium, which is very low and there is no award for the children, namely, son and minor daughters, on account of loss of love and affection. Therefore, the award amount has to be enhanced.

5.2. It is relevant to point out that in the case of death, the Tribunal should have awarded compensation towards loss of love and affection to the children of the deceased. But, in this case, the Tribunal has not awarded the said compensation. Furthermore, the compensation awarded to the wife towards loss of consortium and the transport expenses are very low. But, as the accident is of the year 2002, it may not be proper to enhance the award after the lapse of fifteen years and that too in the absence of cross appeal. Hence, the award cannot be said to be excessive.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 22.02.2006 passed in O.P.No.485 of 2003 by the Motor Accident Claims Tribunal (Principal District and Sessions Judge), Tiruvannamalai.

7. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

8. As the first claimant died, the legal representatives, namely, claimants 2 to 4 are entitled to the first claimant's share as per the ratio of apportionment made by the Tribunal. The second claimant is permitted to withdraw his share of the amount as per the apportionment made by the Tribunal. The

minors would have attained majority as of now. Hence, they are entitled to withdraw their share amount as per the ratio of apportionment made by the Tribunal. The Tribunal shall permit them to withdraw their share of the amount, on production of necessary documents with regard to the age proof. No costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

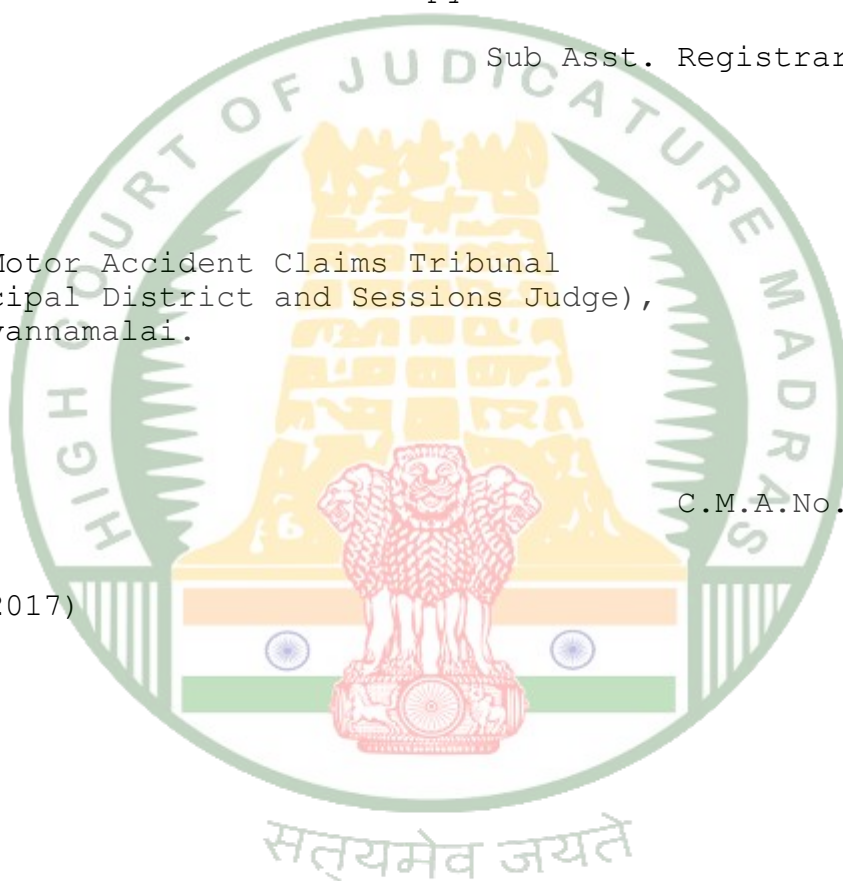
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To

1. The Motor Accident Claims Tribunal
(Principal District and Sessions Judge),
Tiruvannamalai.

C.M.A.No.580 of 2017

PVS (CO)
VR(12/10/2017)



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