



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.325 of 2015
and
MP (MD) Nos.1 & 2 of 2015

TATA AIG General Insurance Co. Ltd,
Ahura Centre, 4th Floor,
82, Mahakali Caves Road,
Andheri (East),
Mumbai - 400 092.

... Appellant/3rd Respondent**Vs.**

1.Kannappan
2.Thangaraj
3.Subbiah
4.Abdul Rahim

... 1 to 3 Respondents/Petitioners
... 4th Respondent/1st Respondent

5.Tamil Nadu State Transport Corporation,
(Madurai Division), Madurai,
Rep.by its Managing Director.

... 5th Respondent/2nd Respondent

6.Muthulakshmi
7.Balasubramanian

... 6&7 Respondents/4&5 Respondents

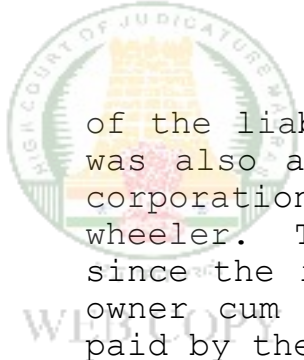
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 29.07.2010 made in MCOP.No.280 of 2008 on the file of the Motor Accident Claims Tribunal (Addl. Sub Court) Tenkasi.

For Appellant	: Mrs.K.R.Shivashankari for Mr.S.Srinivasa Raghavan
For Respondents	: Mr.M.Saravanan for R1 to R3 No appearance for R4 and R5.

JUDGMENT

Heard the learned counsel on either side.

2.The claimants in this case are the brothers of the deceased. The deceased was riding a two wheeler. The bus belonging to the transport corporation dashed against the two wheeler. The Tribunal allowed MCOP.No.280 of 2008 filed by the claimants and fastened 50%



of the liability on the transport corporation. Since the deceased was also at fault, 50% liability alone was fixed on the transport corporation. The appellant herein was the insurer of the two wheeler. Though, no liability as such was fastened on the appellant since the insurance policy had a personal accident coverage for the owner cum driver, a sum of Rs.1.00 lakh alone was directed to be paid by the appellant insurance company.

3.This direction is seriously questioned by the learned counsel appearing for the appellant herein. It is the stand of the learned counsel appearing for the appellant that the Tribunal is not having the jurisdiction to go into the issue of personal accident coverage. This is a matter between the insurance company and the claimant and the same will have to be workedout by invoking the common law remedy and by not filing claim petition before the Motor Accident Claims Tribunal. Though, this stand is correct, still I am not inclined to interfere with the impugned award.

4.It is a fact that the policy had a personal accident coverage. Therefore, this amount is bound to be paid by the appellant insurance company. The Tribunal has only called upon the appellant to honour its contractual obligation. In that view of the matter, I see no ground to interfere with the award passed by the Tribunal.

5.The award dated 29.07.2010 made in MCOP.No.280 of 2008 on the file of the Motor Accident Claims Tribunal (Addl. Sub Court) Tenkasi is confirmed.

6.The appellant is directed to deposit the entire compensation amount as directed by the Tribunal, with interest at the rate of 7.5% per annum from the date of petition till the date of realization with costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants (including sixth and seventh respondents herein) are entitled to withdraw the same, as apportioned by the Tribunal by filing proper application, less the amount already withdrawn by them, if any.

7.This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



To

1. The Motor Accident Claims Tribunal
(Addl. Sub Court) Tenkasi.

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

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 88385

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 88293

SKM

TE/GT/SAR-3 : 19/12/2017 : 3P/5C

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