



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2017

Pronounced on : 18.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)Nos.92 and 93 of 2017

and

C.M.P(MD)Nos.912, 913, 3612 and 3613 of 2017

The Oriental Insurance Company Limited,
rep. By its Manager,
No.1858, South Main Street,
Thanjavur

... Appellant in both appeals

Vs.

1.Sekar
2.Alphonsa
3.Jecab Jeyapaul
4.Iqbal
5.Neesama Beevi
6.Karthikeyan
7.Manikandan

.. RR1 to 3 in CMA 92/2017
.. RR1 and 2 in CMA 93/2017
.. RR4 and 5 in CMA 92/2017
and RR3 and 4 in CMA 93/2017

Common Prayer : These Civil Miscellaneous appeals are filed under section 173 of Motor Vehicle Act, 1988, to set aside the award dated 21.09.2015 made in M.C.O.P.Nos.466 and 467 of 2011 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Thanjavur.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.R.Edin Brough for RR1 to 3 in
CMA No.92/2017 and RR1 and 2 in CMA
93/2017

S.Deenadhayan for R4 in CMA No.92/17
and for R3 in CMA No.93/2017

No Appearance for R5 in CMA No.92/2017 &
R4 in CMA No. 93/2017.

COMMON JUDGMENT**(Judgment of the Court was delivered by G.R.SWAMINATHAN, J**

The insurer has filed these appeals questioning the common award dated 21.09.2015 made in M.C.O.P.Nos.466 and 467 of 2011 on the file of MACT/Special District Judge, Thanjavur.

2.On 19.03.2011, a few students studying in SRM College undergoing MBA Course were travelling as gratuitous passengers in the car bearing Registration No.TN 01 T 6678 (Opel Astra) driven by one Senthilnathan. When the car was proceeding in Perungattur - Kanchipuram road, on account of the rash and negligence driving by the driver, it dashed against a tamarind tree. The students Jaisingh and Azarutheen, who were travelling in the said car died. The parents of the deceased Jaisingh filed M.C.O.P.No.466 of 2011, while the parents of the deceased Azarutheen filed M.C.O.P.No.467 of 2011. In both the M.C.O.Ps., the Tribunal passed awards for a sum of Rs.16,85,000/- each. The parents were held entitled to their proportionate shares of Rs.8,42,500/- each. Questioning the same, these appeals have been filed.

3.The Principal contention urged by the learned counsel appearing for the appellant insurer is that the car in question enjoyed only the coverage of 'Act only Policy'. It was not a comprehensive/package policy. Therefore, the deceased having travelled as gratuitous occupants in the care are not covered by the terms of the policy applicable in this case. The insurer therefore strongly contended that the appellant must be totally exonerated of all liability. By way of abundant caution, it was also pointed out that the quantum of compensation awarded in this case is excessive.

4.While it is true that the deceased had travelled only as gratuitous passengers in the private car in question, in view of the recent decision of the Hon'ble Supreme Court rendered in 2017(1) TN MAC 289 (SC) - Manuara Khatun V. Rajesh Kr. Singh, the insurer has to necessarily satisfy the award in the first instance. Of course, the Hon'ble Supreme Court gave a direction to the insurance company to first pay the awarded sum to the claimants and then to recover the paid amount from the owner of the offending vehicle. In other words, the principle of pay and recover was applied by the Hon'ble Supreme Court even in the cases of gratuitous passengers travelling in the offending vehicle/private car having only Act Policy coverage.

5.In the present case, it is not even known as to who is the owner of the car in question on the date of accident. Originally, one Karthikeyan alone was shown as the owner of the car. He filed a counter stating that he sold the car on 15.03.2005 to one Jeyakumar. He had duly intimated the insurer about this transfer on 20.08.2009. He also pointed out that there has been a further transfer of ownership in the name of one Manikandan on 31.08.2005 and the same is also reflected in the certificate of registration. Thereafter, the said Manikandan was made as the third respondent. The said

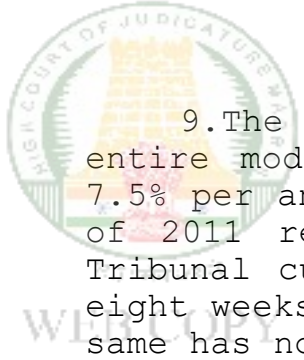


Manikandan filed a counter stating that he had sold it in favour of one Devendran. Thus, there is no clarity as to who owned the vehicle on the date of accident.

6.A Division Bench of this Court, in which one of us (Mr. Justice K.K. Sasidharan) was a party held in the decision reported in (2009) 2 MLJ 963 - Royal Sundaram Alliance Insurance Company Vs. A. Meenakshi that while deciding the claim petition, the motor accident claims tribunal should examine the terms of the policy produced by the insurer and in the event of denial of liability, a finding should be rendered with regard to the nature of the policy as to whether it was an Act policy or a package policy.

7. The appellant insurer has enclosed the counter statements in the typed set of papers. We carefully went through the same. The insurer has nowhere pleaded that the offending vehicle had only an Act Policy coverage and not a comprehensive or package policy coverage. The counter is full of general and sweeping denials. It follows a stereo typed format. Probably on account of omission on the part of the insurer to take a specific denial of liability with regard to the terms of the policy, the Tribunal also did not examine the terms of the policy and render a finding with regard to the nature of the policy as to whether it was an Act policy or a package policy. Only in the grounds of appeal, this contention has been raised. Since in view of the recent decision of the Hon'ble Supreme Court in Manuara Khatun, the insurer in any event has to satisfy the award in the first instance and since there is no clarity as to who was the owner of the vehicle on the date of accident, we are of the view that the matter does not call for any further probe.

8. Now, we come to the quantum of compensation. The deceased are the students, who were undergoing MBA course in SRM College. The accident had taken place in March 2011. Therefore, this Court has notionally fixed their monthly income at Rs.6,500/-. The five Judges Bench of the Hon'ble Supreme Court in the decision reported in 2017 (2) TN MAC 609 (SC) - National Insurance Company Limited Vs. Pranay Sethi held that while determining the income, an addition of 40% of the income is warranted, where the deceased was below the age of 40 years. Therefore, the monthly income of the deceased can be taken as Rs.9,100/- . Since the deceased were bachelors, there must be 50% deduction. Therefore the monthly income would come to Rs.4,550/-. The deceased were aged about 23 years. Therefore, the appropriate multiplier will be 18. Accordingly, the pecuniary loss to the family will be Rs.9,82,800/-. A sum of Rs.80,000/- can be awarded towards loss of love and affection for the parents and a further sum of Rs.15,000/- has to be awarded towards funeral expenses. Therefore, the compensation payable to the claimants will be Rs.10,77,800/-. The claimants in both appeals are entitled to the said sum in the same proportion as laid down by the Tribunal. The award dated 21.09.2015 made in M.C.O.P.Nos.466 and 467 of 2011 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Thanjavur are modified accordingly.



9.The appellant insurance company is directed to deposit the entire modified compensation amount with interest at the rate of 7.5% per annum with costs, to the credit of M.C.O.P.Nos.466 and 467 of 2011 respectively on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Thanjavur, within a period of eight weeks from the date of receipt of a copy of this order, if the same has not been deposited already. On such deposit, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any. The appellant insurance company is permitted to withdraw the balance amount, if any.

10.Both the appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To
The Special District Judge,
Motor Accidents Claims Tribunal cum Special District Court,
Thanjavur.

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and
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3612 and 3613 of 2017
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