



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.520 of 2016

and

C.M.P.(MD) No.6432 of 2016

National Insurance Co. Ltd.,
No.12, Muruga Complex,
K.K.Road, Villupuram.

... Appellant/Respondent No.3

vs.

1.Sudharsan
2.Sivakumar
3.Basheer Ahmed
4.National Insurance Company Limited,
3, North Veli Street,
Madurai.

...1st Respondent/Petitioner

...Respondent Nos.2,3 and 4/
Respondent Nos.1,2 and 4

Prayer: Appeal filed under 173 of Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal, Principal Sub Court, Tenkasi made in M.C.O.P.No.348 of 2012 dated 01.02.2016.

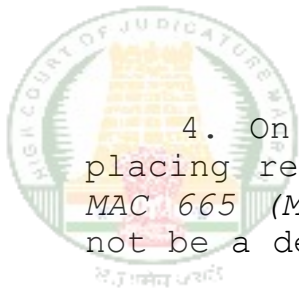
For Appellant	: M/s.R.Rajamani
For R1	: Mr.R.J.Karthick
For R2 to R4	: No appearance

JUDGMENT

The insurer has filed this appeal questioning the impugned award on the grounds of maintainability as well as quantum.

2. One Jayabalan was travelling in a two wheeler on 10.05.2011, when the bus insured with the appellant coming from the opposite direction hit the two wheeler. In the resultant accident, the said Jayabalan died. The said Jayabalan was a bachelor. Except his cousin, namely, the claimant herein, he did not have any other dependant. The Tribunal passed an award for a sum of Rs.6,84,000/- in favour of the said claimant.

3. Contending that the claimant fell under the category of Class-II legal heir and thus there is nothing on record to show that he was a dependant of the deceased, the learned counsel appearing for the appellant insurer submitted that the claim petition has to be dismissed in toto.



4. On the other hand the learned counsel for the claimant by placing reliance on the recent decision of this Court 2017 (2) TN MAC 665 (M.Kavitha v. G.Murugan) submitted that the claimant need not be a dependent. It is enough if he is a legal representative.

5. It is true, that in the instant case the local Tahsildar directed the claimant to move the Civil Court to get declaration. But there are enough and more materials on record to show that the claimant was the legal representative of the deceased. It is evident from the fact that he was shown as the nominee of the deceased in the insurance policy taken by him.

6. I am of the view that the claimant has made out a case that he is a Class-II legal heir of the deceased and that the claim petition is maintainable.

7. The question is how much compensation has to be awarded to the claimant. The claimant is based in Tirunelveli. The deceased was aged about 49 years and residing at Madurai.

8. The claimant has not established that he was dependant of the deceased. Therefore, no compensation can be awarded under the said head. However, the claimant will be entitled to Conventional damages of Rs.70,000/-. Therefore, award dated 01.02.2016 made in M.C.O.P.No.348 of 2012 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi is modified, accordingly.

9. The appellant Insurance Company is directed to deposit the the compensation amount of Rs.70,000/- with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimant is permitted to withdraw the entire amount, less the amount already withdrawn by him, if any, by filing appropriate petition before the Tribunal.

10. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,
The Motor Accident Claims Tribunal, Tenkasi
 2. The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr.R.Rajamani, Advocate, SR.No.92966
+One cc to Mr.R.J.Karthick, Advocate, SR.No.92942

<https://hcservices.ecourts.gov.in/hcservices/>

Kml

RLL/6C/2P/KKR/SAR1/22/2/2018

JUDGMENT MADE IN
C.M.A. (MD) No.520 of 2016
15.12.2017