

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED On : 29.04.2019

JUDGMENT PRONOUNCED On : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2512 of 2012

The Divisional Manager,
M/s. The National Insurance Co. Ltd.,
JN Street, Puducherry. ...Respondent II/Appellant

Vs.

1.Thiru.Sundaramoorthy ... Respondent I/Petitioner I
2.Miss.Sivagami ... Respondent II/Petitioner II
3.Thiru.Suresh ... Respondent III/Petitioner III
4.Thiru.S.K.Selvarajan ... Respondent IV/ Respondents -I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.01.2012 in M.C.O.P.No. 308 of 2006, on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge) of Tindivanam District.

For Appellant : Mr.J.Chandran

For R1 to R3 : S.Kaithamalai Kumaran
R4 - No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 308 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Tindivanam District.

2. The claimants in M.C.O.P.No. 308 of 2006 are the legal heirs of the deceased Lakshmi respectively.

3. The brief case of the respondents 1 to 3/claimants is as follows:

(i) The deceased was aged about 45 years, on the date of the accident. She was working as Sithal in Building construction and was earning a sum of Rs.4,500/- per month.

(ii) On 31.05.2006, at about 12.30 hours, the deceased Lakshmi travelled in the motorcycle as a pillion rider and one senthilkumar was riding his motorcycle bearing Registration No.TN 27 T 4443 near Malgoodai canal at Siruthangalkattu curve road to reach Thangapuripattanam and at that time, the rider of the motorcycle drove it in a rash and negligent manner. Due to the impact, the deceased Lakshmi was thrown away from the motorcycle and fell on the road and was sustained grievous injuries on head, nose and other multiple injuries and all over the body. Since, the said motorcycle was insured with the present appellant, both the owner of the said motorcycle and the present appellant, are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

4. The learned Tribunal, based upon the oral and documentary evidence, held that, both the owner and the insurer of the said motorcycle are jointly and severally liable to pay compensation and awarded a compensation of Rs.436,896/- together with interest at the rate of 7.5% per annum to the respondents 1 to 3/claimants. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. The learned counsel appearing for the appellant would contend that the deceased travelled in the motorcycle as a pillion rider and nature of the policy being act one policy, the Insurance Company is not liable to pay the compensation to the pillion rider. He would further contend that the quantum of compensation awarded by the Tribunal is exorbitant, and therefore, it has to be reduced.

6. The learned counsel for the respondents 1 to 3 (legal representative of the deceased Lakshmi) would submit that the Insurance Company is liable to pay the compensation and made a submissions in support of the award of the Tribunal.

7. After hearing both the parties, the factum of the accident involvement of the vehicle and the manner of the accident and finding of the Tribunal that the accident has taken place due to the negligence on the part of the driver of the offending vehicle are not in dispute. Accordingly, the said findings are hereby confirmed.

8. On perusal of Exhibit R1-Insurance Policy is marked through R.W.1-Staff from the Insurance Company goes to show that the National Insurance Company has issued motorcycle/cyclist

policy-cum-liability only for the vehicle involved bullet in TN 27 T 4443 and schedule of premium is as follows:

I.P.Basic	:	175.00
Compulsary PA to Owner cum Driver	:	50.00
Amount10000		
Gross (R)		225
Gross OD&TP	:	225
Loading on TP Premium	:	45.00
Stamp Duty	:	1.00
Net Premium	:	270
Service Tax 10%	:	28
Net amount payable (rounded)	:	298

and accordingly, this Court is of the considered view that in view of the premium schedule under the act one policy and the nature of the policy being act one policy, the policy coverage provided by the appellant/Insurance Company is only to the extent of basic namely, the third party and compulsory personal accident coverage to the owner cum driver and no other amount has been ordered premium has been rendered and hence, as the deceased has travelled as a pillion rider only two wheeler, the policy coverage cannot be extended.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal directing the present appellant to pay the compensation to the respondents 1 to 3/claimants is modified. The present appellant - National Insurance Company Limited is directed to 'pay' the entire compensation amount awarded by the Tribunal to the respondents 1 to 3/claimants, and then, 'recover' the same from the owner of the motorcycle bearing Registration No. TN 29 T 4443.

(iv) It is brought to the notice of this Court that, the entire compensation awarded by the Tribunal has already been deposited by the National Insurance Company Limited to the

credit of M.C.O.P.No. 308 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Tindivanam.

(v) The respondents 1 to 3/claimants are at liberty to withdraw the same, after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

(vi) The National Insurance Company Limited can 'recover' the same, from the owner of the said motorcycle, after filing Execution Petition, before the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Tindivanam.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Additional Subordinate Judge, Tindivanam.

2.The Section Officer,
V.R. Section, High Court,
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.42899
+1cc to Mr.S.Kaithamalai Kumaran, S.R.No.42468

C.M.A.No.2512 of 2012

AD(CO)

RRS (04/07/2019)

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