

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1112 of 2010 and

and M.P.No.1 of 2010

The United India Insurance Co., Ltd.,
Rep.by its Divisional Manager,
Having its office at 1st Floor,
T.K.M.Complex, No.45-51,
Katpadi Road, Vellore 632 004,
Vellore District.

... Appellant/2nd Respondent

vs

1.S.Deva Anbu

2.Minor.Anbarasu

3.Minor.Prabu

Minors Rep by their Paternal grand

father S.Deva Anbu

...Respondents 1 to 3/

Petitioner 1 to 3

4.K.Vijayakumar

...4th Respondent/

1st Respondent

5.Neelavathy

...5th Respondent/3rd respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 , against the Judgment and decree dated 31.10.2008 made in M.C.O.P.No.621 of 2004 on the file of the Motor Accident Claims Tribunal (Principal District Court) Vellore.

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.M.Sivakumar

JUDGMENT

With consent of the learned counsel for the appellant and contesting respondents 1 to 3 , this appeal is taken up for hearing and final disposal.

2. The appellant-Insurance Company is aggrieved by the impugned fair and decretal order dated 31.10.2008 (impugned order) passed by the Motor Accident Claims Tribunal, (Principal District Court) Vellore in M.C.O.P No.621 of 2004 (hereinafter referred to as the Tribunal)

3. By the impugned order dated 31.10.2008, the Tribunal has awarded a sum of Rs.8,76,800/-. The claimants/respondents 1 to 3 are the wife and children of the deceased Nepolian .

4. On 06.10.2004 at about 1.30 a.m., the deceased Nepolian was travelling along with two other friends, in the fourth respondent's car bearing Reg.No.TN 09-F-7245 insured with the appellant/Insurance company. The said vehicle was driven in a rash and negligent manner at a very high speed by the driver of the fourth respondent while proceeding on the Cheyyar to Arcot Road near Adiparasakthi College and capasized the car. Due to the said impact, the deceased Nepolian sustained injuries and died on the spot.

5. Though the grounds of appeal raised pertains to the quantum of compensation and applicability of the multiplier, the learned counsel for the appellant-Insurance Company for the first time submitted that the deceased Nepolian was an occupant in the accident vehicle insured with the vehicle and insured with only " Act Policy" and therefore the Tribunal erred in awarding the compensation to the claimants 1 to 3 /respondents.

6. However, on going through the impugned Judgment and decree and the grounds of appeal and the counter filed by the appellant-Insurance Company before the Tribunal, it is noticed that such grounds was not taken by the appellant before the Tribunal. I am of the view that this appeal is liable to be dismissed and is hereby accordingly dismissed.

7. The Appellant-Insurance Company is directed to deposit the award amount less the amount already deposited, if any, with interest at the rate of 9% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order.

8. On such deposit being made, the first respondent is permitted to withdraw the compensation together with interest and cost in the same proportion as was directed by the Tribunal, by filing suitable application before the Tribunal, after adjusting the amount, if any, already withdrawn.

9. The share of the minor respondents 2 & 3/claimants 2 and 3 are to be deposited in any one of the nationalised banks till they attain majority while the first respondent claimant/guardian of the minors is permitted to withdraw the accrued interest once in three months. On attaining majority, respondents 2 and 3 are permitted to withdraw their respective shares. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

kkd/jen

To:

1.The Motor Accident Claims Tribunal
(Principal District Court) Vellore.

2.The Section Officer

VR Section

High Court,
Chennai

pp(co)

aa27/11/2020

WEB COPY

C.M.A.No.1112 of 2010