

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1357 of 2016

1.Murugaiyan

2.Muthulakshmi

3.Suresh

... Appellant/Petitioner

Vs.

Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
Lodge President,
No.33C/10, Thanjavur Road,
Tiruvavur.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 18.11.2015, made in M.C.O.P. No. 270 of 2014, on the file of the District Court, (Motor Accident Claims Tribunal), Nagapattinam.

For Appellants : Mr. K. Prasanna
for M/s. Sai Bharath and Ilan

For Respondent : Mr. K. Vinod
for M/s. Elveera Ravindran

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 18.11.2015, made in M.C.O.P. No. 270 of 2014, on the file of the District Court, (Motor Accident Claims Tribunal), Nagapattinam.

2.The appellants are claimants in M.C.O.P. No. 270 of 2014, on the file of the District Court, (Motor Accident Claims Tribunal), Nagapattinam. They filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one M. Surendran, who died in the accident that took place on 12.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the deceased, rider-cum-owner of the Motorcycle and directed the respondent as insurer of the vehicle to pay a sum of Rs.1,00,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 18.11.2015, made in M.C.O.P. No. 270 of 2014, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased who was owner of the Motorcycle has paid premium of Rs.50/- for personal accident coverage. There is no restriction with regard to quantum of compensation payable by the respondent. The Tribunal erred in holding that the appellants are entitled to Rs.1,00,000/- only as compensation for the death of M. Surendran. The appellants are entitled to Rs.14,00,000/- as compensation as the deceased has paid premium for personal accident coverage and the quantum is not restricted to Rs.1,00,000/-. The respondent collected premium of Rs.355/- for 3rd party coverage and Rs.50/- for personal accident coverage. The respondent-Insurance Company has collected Rs.350/- for 3rd party as there will be number of 3rd party claimants and Rs.50/- for owner cum driver as he is a single person. When there is no restriction of quantum for 3rd party, the same is applicable to the owner-cum-driver also. In support of his contentions, the learned counsel appearing for the appellant relied on the following judgments:

(i) The judgment of this Court reported in 2013 (1) TN MAC 729 [National Insurance Co. Ltd., Vs. Krishnan], wherein the relevant paragraphs are extracted hereunder:

"35. In The Branch Manager, The New India Assurance Co.Ltd. Vs. Mahadev Pandurang Patil and Another, reported in ILR 2011 KAR 850, it is held that, "it is settled law that if the Insurer has not collected extra premium, it is not liable to cover the risk of the occupants of the said Jeep. It is worthwhile to extract the relevant paragraph 17, which reads thus:

"17. In view of the authoritative pronouncement of the Apex Court holding that an occupant/inmate/passenger in a private car, is not a third party, the finding recorded by the tribunal that the insurance policy issued covers the risk of such persons and therefore

the insurance company is liable to pay compensation amount is illegal and contrary to the law declared by the Apex Court. In fact, in the policy, no additional premium is received by the insurance company to cover the risk of such persons. It is clear from the terminology used in the policy which fact is not in dispute. In one of the cases, additional premium is collected to loading the risk of third party only, as is clear from the policy that loading was not meant to cover risk of inmates of a private car and therefore, merely because an additional premium is collected under the said policy, it cannot be inferred that the risk of inmates of a car are covered. The words are specific that the loading is done in order to cover only third party risk, it is not a case of additional premium being collected to cover the risk of inmates along with third parties. Therefore, in the facts of this case, we are satisfied, as the insured has not paid additional premium and the insurance company has not collected any additional premium, the risk of the occupants of a private car was not covered. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set aside."

"Therefore, it can be seen that, in the instant case, it is not the case of the owner of the offending vehicle that he has paid extra premium to cover the risk of the inmates of the Jeep nor it is established that the Insurer has collected extra premium, covering the risk of the occupants of the Jeep. Hence, having regard to the well settled law laid down in the aforementioned decision, we are of the considered view that the direction issued by Tribunal to the appellant Insurer to indemnify the award cannot be sustained and is liable to be set aside."

(ii) the judgment of this Court dated 29.01.2019 made in C.M.A. No. 2396 of 2015, wherein the relevant paragraphs are extracted hereunder:

"9.The contention of the learned counsel appearing for the appellant that the policy issued by the Insurance Company under Section 147 of the Motor Vehicles Act, does not cover the injury or death of owner, pillion rider and occupants of four wheeler and driver, has considerable force.

The policy issued by the Insurance Company under the said Section is only "Act Policy" which covers third party and

owner of the goods and it is open to the owner of the vehicle to pay additional premium to cover personal accident claim of owner and pillion rider and occupants of four wheeler. On receipt of additional premium, the Insurance Company agrees to pay the compensation for the bodily injury or death of above referred persons and "Act Policy" is converted as 'Package Policy'.

10. From the judgments relied on by the appellant, it is clear that the Insurance Company is liable to pay compensation to the owner, driver, pillion rider and occupants of vehicle only when the policy is package policy namely, only when additional premium is paid. The learned counsel appearing for the appellant referred to Ex.P3/Insurance Policy and contended that the second respondent paid additional premium only for own damage and no additional premium paid for personal accident cover. The learned counsel appearing for the appellant further contended that the Tribunal has erred in holding that driver of the vehicle was covered by Ex.P3/Insurance Policy. The said contention has considerable force, in view of the well settled judicial pronouncement and unless additional premium is paid, the persons, who are not covered by the policy issued under Section 147 of the Motor Vehicles Act, are not entitled to claim compensation from Insurance Company.

11. The first respondent has filed the claim petition under Section 140 and 166(1) of the Motor Vehicles Act. When the claim petition is filed under Section 166(1) of the Act, the claimant has to prove the negligence. Unless the negligence is proved, the owner of the vehicle and Insurance Company are not liable to pay compensation. From the materials available on record, it is seen that first respondent fell down while giving way to on coming lorry driven in a rash and negligent manner and sustained injuries. The Tribunal accepted the contention of first respondent and held that accident did not occur due to the negligence on the part of the first respondent. The Tribunal did not fix negligence on anybody especially on the second respondent/owner of the vehicle. In such case, the claim petition under Section 166(1) of the Motor Vehicles Act is not maintainable against

the second respondent as well as the appellant. It is to be taken note that the first respondent also filed claim petition under Section 140 of the Act. As per this Section, the injured or legal heirs of deceased need not prove negligence, but the injured or legal heirs of deceased are entitled only Rs.25,000/- and Rs.50,000/- respectively.

12.The issue whether the claimant is entitled to only Rs.1,00,000/- under personal accident coverage came up for consideration before this Court. This Court in the Judgment reported in 2013 (1) TN MAC 729 (National Insurance Co. Ltd., Vs. Krishnan), held that the Tribunal or Courts must award just compensation after referring to the judgment with regard to just compensation. This Court held that the claimant is entitled to more amount than Rs.1,00,000/- under personal accident coverage and held that the claimant is entitled to amount under different heads as awarded by Tribunal."

6.Per contra, the learned counsel appearing for the respondent-Insurance Company contended that the deceased has paid Rs.50/- as additional premium towards personal accident coverage. The amount under this heading is restricted to maximum of Rs.1,00,000/- for owner of the Two-wheeler and Rs.2,00,000/- for owner of the Four-wheeler. The deceased was owner of the Two-wheeler and therefore, he is not entitled to more than the coverage under the personal accident coverage. The Tribunal considering the materials on record, has rightly granted compensation of Rs.1,00,000/- under the personal accident coverage. In support of his contentions, the learned counsel appearing for the respondent relied on the judgment of this Court reported in 2019 (2) TN MAC 223 [Royal Sundaram Alliance Insurance Co. Ltd., Vs. S. Vani and others], wherein the relevant paragraphs are extracted hereunder:

"19. As far as liability of 50% fixed on the 4th respondent in MCOP No.432 of 2012 is concerned, the finding of the Tribunal is erroneous and the same is set aside for the reason that the policy issued by the 4th respondent to the deceased/owner of the car is only a package policy and it does not cover the risk of the owner of the car. The owner of the car paid extra premium of Rs.100/- to cover the personal accident coverage. As per the policy issued by the 4th respondent, the maximum amounts that can be paid to the owner for personal accident coverage is only Rs.2,00,000/- and the same has been paid to

the claimant. This contention has considerable force and is acceptable. Section III-A of the policy reads as follows:

"Section III - PERSONAL ACCIDENT
COVER FOR OWNER-DRIVER:

The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the Owner-Driver of the Private Car, in direct connection with the Private Car insured or whilst driving or mounting into/dismounting from the Private Car insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

provided always that (A) compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.2 lakhs during any one period of insurance."

20. The contention of the learned counsel appearing for the claimant that once extra premium is paid for the injury or death of the owner of the vehicle, the amount cannot be restricted to Rs.2,00,000/- and relied on the Judgment of this Court reported in National Insurance Company Ltd., Vs. Krishnan and another, 2013 (1) TN MAC 729: 2013 (3) MWN (Civil) 161: 2014 ACJ 1862 cited supra. The said case relates to the injuries sustained by the owner of the two wheeler, who paid extra premium for personal accident coverage. The Tribunal considering the materials in that case held that the claimant therein is entitled to total compensation of Rs.3,13,934/-, but restricted the same to Rs.1,00,000/- in view of the limit fixed. This Court held that the insured owner of the vehicle is entitled to compensation for pecuniary and non-pecuniary loss like medical expenses, pain & suffering etc. and held that the claimant is entitled to entire amount awarded by the Tribunal. The ratio in the said Judgment is

not applicable to the facts and circumstances of the present case as the claimant in M.C.O.P.No.432 of 2012 is claiming compensation for the death of owner of the car while he was an occupant of the car. In such case, the compensation for the medical expenses and pain & suffering does not arise.

23. From the various judgments relied on by the learned counsel appearing for the 4th respondent/appellant herein, it is clear that the additional premium paid by the owner of the vehicle concludes a contract between the owner and the Insurance Company. Both the owner as well as the Insurance Company are bound by the terms of contract. When the limit is fixed as Rs.1,00,000/- for two wheeler and Rs.2,00,000/- for four wheeler, the insured or legal heirs cannot claim more than the said amount. In view of the well settled judicial pronouncement, the award of the Tribunal directing the 4th respondent/appellant herein to pay a sum of Rs.13,86,572/- (50% of the total amount) to the claimant for the death of her husband, is set aside. The 4th respondent is not liable to pay any amount to the claimant in MCOP.No.432 of 2012.

24. It is pertinent to point out that the Division Bench of this Court in the judgment Divisional Manager, United India Insurance Company Ltd., Vs. R.Rekha, 2017 (2) TN MAC 674 (DB) cited supra, has stated that Rs.1,00,000/- fixed as compulsory personal accident coverage in the year 2002 is too low and the amount should be fixed not less than Rs.15,00,000/-. IRDA has considered this aspect and now the personal accident coverage has been enhanced to Rs.15,00,000/- as observed by the Division Bench of this Court."

7. Heard learned counsel appearing for the appellants as well as the respondent and perused the materials available on record.

8. From the materials on record, it is seen that M. Surendran died while he was driving the Motorcycle in a pit in the margin of the road unexpectedly and suddenly turtled and lost control over the vehicle, thrown away on the tar portion of the road, resulting in serious head injury. It is also seen that the deceased paid Rs.50/- as premium for personal accident coverage.

As per the policy condition, the personal accident coverage of Two-wheeler is restricted to maximum of Rs.1,00,000/-. This issue is considered by the Division Bench of this Court in Divisional Manager, United India Insurance Company Ltd., Vs. R. Rekha, reported in 2017 (2) TN MAC 674 (DB). The Division Bench of this Court has held that maximum amount awarded under the personal accident coverage for Two-wheeler is Rs.1,00,000/- and for Four-wheeler is Rs.2,00,000/-. The learned counsel appearing for the appellants relied on the judgment of this Court dated 29.01.2019 made in C.M.A. No. 2396 of 2015 and the Division Bench of this Court reported in 2017 (2) TN MAC 674 (DB) cited supra and contended that the appellants are entitled to more than restricted amount of Rs.1,00,000/- covered under the personal accident coverage.

9.From the judgments of the Division Bench of this Court reported in 2013 (1) TN MAC 729 (cited supra), it is seen that the amounts awarded by the Tribunal in addition to the disability, under the heads of pain and suffering, extra nourishment, attendant charges, medical expenses, loss of income, traveling expenses, etc., was confirmed. The amount of Rs.2,31,000/- granted by the Tribunal for disability was reduced to Rs.25,000/- as per Section 140 of the Motor Vehicles Act. The judgment reported in 2013 (1) TN MAC 729 (cited supra) and the judgment dated 29.01.2019 made in C.M.A. No. 2396 of 2015 relates to compensation for the injuries sustained by the rider of the Motorcycle/claimant. In such case, apart from the amounts payable under Section 140 of the Motor Vehicles Act, the compensation awarded under 7 different heads are pain and suffering, extra nourishment, attendant charges, medical expenses, loss of income, frustration and traveling expenses. The present case is not claimed for compensation of the injuries. It is claimed for the death of one M. Surendran, by the appellants 1 and 2, sons and 3rd appellant, brother of the deceased. The judgment of this Court reported in 2013 (1) TN MAC 729 (cited supra) relied on by the learned counsel appearing for the appellant is not applicable to the facts of the present case, while the judgments relied on by the learned counsel appearing for the respondent reported in 2017 (2) TN MAC 674 (DB) and 2019 (2) TN MAC 223 are squarely applicable to the facts of the present case. In view of the judgment of this Court in Divisional Manager, United India Insurance Company Ltd., Vs. R.Rekha, reported in 2017 (2) TN MAC 674 (DB), the appeal is liable to be dismissed as devoid of merits.

10.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.1,00,000/- along with interest and costs is confirmed. The respondent-Insurance Company is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy

of this judgment, to the credit of M.C.O.P.No. 270 of 2014. On such deposit, the appellants/ claimants are permitted to withdraw their share of the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1.The Motor Accident Claims Tribunal
The District Judge
Nagapattinam.

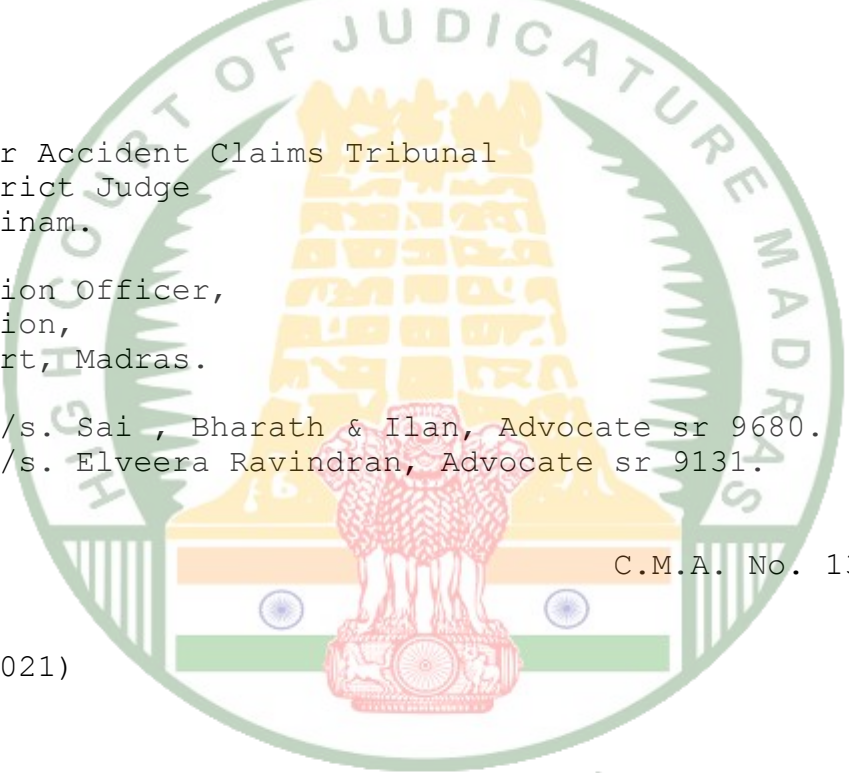
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 Cc to M/s. Sai , Bharath & Ilan, Advocate sr 9680.

+1 CC to M/s. Elveera Ravindran, Advocate sr 9131.

C.M.A. No. 1357 of 2016

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