

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1957 of 2016

and

C.M.P.No.14230 of 2016

Reliance General Insurance Company Ltd.,
Rep.by its Manager,
III Floor, Sakthi Super Market Buildings,
No.408, Perundurai Road,
Erode.Appellant/Respondent

/versus/

1.Kamatchigounder

2.Angammal

3.Eswari

4.Sivagami

5.Shanthi

6.Chandra

..Respondents/Petitioners

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 29.10.2015 made in M.C.O.P.No.513 of 2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani.

For Appellant : Mr.S.Arunkumar

For Respondents: No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant. The respondents though served notice, they have not engaged any counsel and the matter was listed twice for hearing.

2. The learned counsel for the appellant was directed to serve notice to the appellant informing about the pendency of

this appeal. Despite notice, there is no representation for the respondent today.

3. The short point involved in this case is that on 10.07.2013, Sakthivel was driven his Bajaj discover motor cycle while negotiating the turn at Sethanaikanur near Mala temple Karuvalvadipudur to Brammadesam road, the motorcycle skid and he fall down on his own. He was thrown out from the vehicle and sustained injury. He was taken to hospital, but died on the same day. The claim petition was filed on the ground that the deceased was earning Rs.10,000/- per month and he was 32 years at the time of accident. Hence the Insurance Company is liable to compensate the loss.

4. Per contra, the Insurance Company's specific defence was that the Bajaj motor cycle which was driven by the deceased Sakthivel bearing registration No.TN 36 AY 7350 though insured under them, the claimant being the owner of the vehicle and the tort-feasor, the Insurance Company is not liable to pay any compensation except the PA cover of Rs.1,00,000/-.

5. The Tribunal unfortunately did not accept the plea of the Insurance Company. The judgment relied by the Insurance Company was not considered by the Tribunal and he has gone tangently deciding upon the maintenance of claim petitions under Section 166 of the Motor Vehicles Act and this claim petition filed under Section 163 A of MV Act. The Tribunal has awarded a sum of Rs.11,32,000/- as compensation with interest at the rate of 7.5%.per annum.

6. At the time of admission, this Court found the material error in the award, hence passed the following interim order:

"2.Mr.S.Arunkumar, learned counsel for the appellant assailing the impugned award passed by the Tribunal awarding a sum of Rs.11,32,000/- in favour of the respondents/claimants for the loss of the breadwinner, who admittedly rode his Bajaj Discovery Motorcycle along with a pillion from Karuvalvadipudur to Brammadesam Road and when the vehicle was near Mala Koil, it turned and capsized. Due to the said accident, it was clearly pleaded that Sakthivel was thrown on the road and sustained fatal injuries. When the self made averment in the claim petition clearly shows that the decease was the tort-feasor, the Tribunal, overlooking this legal position, has wrongly allowed the claim petition. In support of his submission, he has also relied upon a judgment of the Apex Court in the case of New India Assurance Company Limited Vs. Prabha Devi and others, 2013 (1) TN MAC

781, wherein it is held that when the deceased owner travelling in a Jeep driven by his driver, after meeting with an accident, if the owner died due to the injuries sustained in the accident, no compensation can be awarded to the claimants when the deceased himself was insured as well as he owner of the vehicle. It is also his contention that at the maximum the claimants are entitled to get a sum of Rs.1,00,000/- under the Personal Accident Coverage and even for that, they cannot come to the Tribunal.

3.Considering the above submissions, there shall be an order of interim stay of the impugned award subject to the condition that the appellant deposits a sum of Rs.1,00,000/- along with interest accrued thereon, less the amount of Rs.25,000/- already deposited at the time of filling appeal, to the credit of the M.C.O.P.No.513 of 2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District within a period of two weeks from the date of receipt of a copy of this order, failing which the interim stay granted shall stand automatically vacated."

7. By this time, it is now well settled. If the owner of the vehicle is the tort-feasor, the insured cannot have a claim under the Motor Vehicles Act, that is under Section 163 of the MV Act. As per Section 163 which is meant for third parties claimant. Admittedly the claimant is the owner and the tort-feasor. He cannot claim compensation against the insurer, who enters the shoes of the owner to indemnify him as per contract.

8. Hence the appeal is allowed. The Tribunal award of Rs.11,32,000/- is set aside. Since it is admitted facts that the claimant is entitled for Rs.1,00,000/- and that money has already been deposited, the claimants need not be forced to take appropriate proceedings for the recovery of the money. Rs.1,00,000/- deposited pursuant to the interim order of this Court may be permitted to be withdrawn by the claimants. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accident Claims Tribunal,
IV Additional District Court, Bhavani.

Copy to :
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, sr no.28370

C.M.A.No.1957 of 2016
& C.M.P.No.14230 of 2016

GP (CO)
RMP (28/04/2021)



WEB COPY