



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.194 & 195 of 2017
and C.M.P.Nos.1284 & 1285 of 2017

C.M.A.No.194 of 2017

The Oriental Insurance Co.Ltd.,
No.547, Gandhi Road,
First Floor, Opp.State Bank of India,
Kancheepuram.

... Appellant

Vs

1.Sekar
2.V.Srinivasan
S/o.Vethakannu

...Ist Respondent/Petitioner

...IInd Respondent/R1

C.M.A.No.195 of 2017

The Oriental Insurance Co.Ltd.,
No.547, Gandhi Road,
First Floor, Opp.State Bank of India,
Kancheepuram.

... Appellant

Vs

1.Sekar
S/o.Chinna Pillai

2.Minor.Vairamani
S/o.Sekar
3.Minor.Vairamuthu
S/o.Sekar

4.Minor.Vaideki
D/o.Sekar

...R1 to R4/Petitioners

(Minor respondents 2 to 4 rep.by
their father and next friend, Sekar,
the first respondent herein).

5.V.Srinivasan
S/o.Vethakannu

...5th Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.Nos.264 and 279 of 2008, dated 02.06.2015 on the file of the Additional Subordinate Judge, Chengalpattu District.



WEB COPY

For Appellant : Mr.J.Chandran
(in both C.M.As)

For Respondents: Mr.K.Govi Ganesan
for R1 (in C.M.A.No.194 of 2017)
for R1 (in C.M.A.No.195 of 2017)
Mr.V.Subramanian
for R2 (in C.M.A.No.194 of 2017)
for R2 (in C.M.A.No.195 of 2017)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the Insurance Company against the awards of a sum of Rs.7,84,000/- towards compensation to the first respondent in C.M.A.No.194 of 2017 and Rs.6,10,000/- towards compensation to the respondents 1 to 4 in C.M.A. No.195 of 2017, due to the death of Vairavel, who is the son of 1st respondent in C.M.A.No.194 of 2017 and Sivarani, who is the wife of the 1st respondent as well as mother of the respondents 2 to 4 in C.M.A.No.195 of 2017, in a motor vehicle accident.

2.The case in brief, is as follows:

On 01.07.2007 at about 11.30 a.m., the deceased Vairavel was riding his TVS Champ motorcycle bearing Registration No.TSI 3517 along with his mother Sivarani, who was travelling as pillion rider. When they were proceeding on the Chengalpattu to Thirukazhukundram Road and reached near a cement godown, another motorcycle (Hero Honda Splendor Plus) bearing Registration No.TN 21 K 7346 belonging to the 2nd respondent and insured with the appellant insurance company in C.M.A.No.194 of 2017, came in a rash and negligent manner and hit the motorcycle from behind. Due to the said impact, the deceased Vairavel and Sivarani, sustained grievous head injuries and other injuries all over the body. Immediately they were rushed to the C.M.C.Hospital, Chengalpattu for treatment. Thereafter, they were shifted to the Government Hospital, Chennai for further treatment. The deceased Vairavel died on 24.07.2007 and his mother Sivarani died on 03.07.2007 in the hospital. The father of the deceased Vairavel filed a claim petition before the Tribunal, claiming a sum of Rs.4,00,000/- for the death of the deceased Vairavel, in MCOP No.264 of 2008. The husband, sons and daughter have filed a claim petition in MCOP No.279 of 2008 for the death of the deceased Sivarani, claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.7,84,000/- and Rs.6,10,000/-, respectively, with interest at the rate of 7.5% per annum from the respective dates of petitions. The Tribunal has directed



both the owner of the vehicle as well as the Insurance Company to pay the compensation amounts, jointly and severally.

3. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4. The learned counsel appearing for the appellant/Insurance Company has submitted that the Tribunal ought to have held that the accident had occurred solely due to rash and negligent act of the deceased and reduced the compensation under Section 140 of Motor Vehicles Act. On the other hand, it is also submitted that the compensation awarded by the Tribunal under various heads are excessive and exorbitant and hence, the same needs significant reduction. It is also submitted that the rider of the offending vehicle was not having valid driving license at the time of accident.

5. The learned counsel for the first respondent in C.M.A.No.194 of 2017 and respondents 1 to 4 in C.M.A.No.195 of 2017 has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just, fair and reasonable compensation in both these cases and hence, the same do not require any interference in the hands of this Court.

6. Heard the learned counsel on either side and perused the materials available on record.

7. With regard to the contention put forth on the side of the Insurance Company before the Tribunal that the rider of the offending vehicle was not having valid driving license at the time of accident, the Tribunal has observed that the Insurance Company has not summoned and examined the Regional Transport Officials. Further, no steps have been taken by them to produce the driving licence extract of the 2nd respondent. After a detailed analysis of the matter, the Tribunal has held that the offending vehicle (Hero Honda Splendor Plus bearing Registration No.TN 21 K 7346) was involved in the accident and there was no rebuttal evidence put forth on the side of the owner of the vehicle in this regard. The Tribunal has observed that the fact that another two wheeler driven in the same direction, dashed against the deceased's vehicle and caused an accident, has been clearly spoken to in the recitals of Ex.P1-First Information Report and that the Insurance Company, have not proved otherwise. The Tribunal has also observed that the 2nd respondent vehicle was covered under a valid and subsisting Insurance Policy with the appellant/Insurance Company at the relevant point of time and the claimants, being a third party, their risks need to be covered under the policy and as such the owner of the vehicle and the Insurance Company are liable to compensate the claimants. This Court is not inclined to



interfere with the said factual findings arrived at by the Tribunal.

8. With regard to the quantum of compensation awarded by the Tribunal in both these cases, the Tribunal has relied upon the exhibits, evidence of witnesses, Death Reports and Death Certificates of the deceased, Legal Heirship Certificates of the deceased Sivarani and Vairavel, Post Mortem Certificates, II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the above compensation amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

9. In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed. The appellant / Insurance Company and the first respondent / owner of the vehicle are directed to deposit the compensation amounts with interest and costs, as awarded by the Tribunal, after deducting the amounts if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. The respondents 2 to 4 in CMA No.195 of 2017 would have attained majority by now. Hence, on such deposit being made, all the claimants are permitted to withdraw their respective shares on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ms
To

1. The Additional Subordinate Judge,
Chengalpattu District.

2. The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.K.Govi Ganesan, Advocate Sr.27586 and 27584

C.M.A.No.194 & 195 of 2017
and
C.M.P.Nos.1284 & 1285 of 2017

srg 03/09/2021