



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Eleventh day of March Two Thousand Twenty
PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) No.12273 of 2019
IN CMA(MD) No.486 of 2018

1 VIJAYARANI
2 MINOR DANISH
3 MINOR DANYA ... PETITIONERS/ RESPONDENTS 1 TO 3
(FOR PETITIONERS 2 AND 3 THE 1ST PETITIONER IS REPRESENT AS
GUARDIAN AND MOTHER)

Vs

1 THE UNITED INDIA INSURANCE CO. LTD,
XAVIER BUILDING 3RD FLOOR,
PWD ROAD, NAGERCOIL.

2 JEGANATHA RAJ

3 THE MANAGING DIRECTOR
TAMIL NADU STATE TRANSPORT CORPORATION LTD,
(MADURAI DIVISION III), NAGERCOIL.

4 MAHESH @ MAHESH KUMAR

5 GANAPATHI ... RESPONDENTS/ RESPONDENTS 4 TO 7

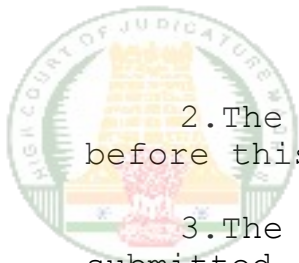
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order to permit the petitioners/claimants to withdraw 50% of the award amount and accrued interest with cost deposited in MCOP No.49 of 2012 on the file of Motor Accident Claim Tribunal (Sub Court), Kuzhithurai.

PRAYER IN CMA(MD) No.486 of 2018:

To set aside the judgment and decree dated 24.08.2017 passed in MCOP No.49 of 2012 on the file of the Hon'ble Motor Accident Claims Tribunal(Sub Court), Kuzhithurai.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.SIVAKUMAR, Advocate for the petitioner and of Mr.G.PRABHU RAJADURAI, Advocate for R1, and R2 to R5 not appeared either in person or by an advocate, the court made the following order:-

The petitioners/claimants have filed this petition to permit them to withdraw 50% of the award amount with accrued interest and cost deposited in MCOP No.49 of 2012 by the Insurance Company.



2.The fourth respondent/Insurance Company has filed an appeal before this Court challenging the award passed by the Tribunal.

3.The learned counsel appearing for the fourth respondent submitted that the petitioners/claimants themselves admitted that during the accident, the deceased was travelling as a pillion rider in the two wheeler. As per the Act Policy, the pillion rider of the two wheeler is not a third party and the policy is not covered. Therefore, the Insurance Company is not liable to pay the compensation. He further submitted that the Tribunal has erroneously passed the order, as if the deceased is a third party. Therefore, the fourth respondent/Insurance Company is before this Court.

4.Though the petitioners have taken a plea that the rider of the two wheeler followed the bus, all of a sudden, without observing the Motor Vehicle Rules and even without any indication, the bus was stopped, the rider of the vehicle hit against the bus. Therefore, the accident had happened due to the rash and negligent driving of the driver of the Transport Corporation. Admittedly, in this case, the Tribunal has not given any findings against the Transport Corporation and only the rider of the vehicle and also the Insurance Company of the two wheeler are liable to pay the compensation.

5.Based on the records, the Insurance Company deposited the amount and challenged the finding of the Tribunal. Now, the claimants have not filed any appeal against the finding of the Tribunal. Therefore, since the liability of the appellant/fourth respondent itself is disputed, this Court is not inclined to permit the petitioners to withdraw the amount. Hence, this Petition is dismissed.

6.However, the learned counsel for the petitioner has expressed that he wanted to file a cross-appeal. The claimants are the legal heirs of the deceased. The claimants have also specifically pleaded in the claim petition that the accident had happened due to the negligent driving of the drover of the bus. Therefore, in order to give an opportunity to the petitioners to contest the issue by filing a cross appeal.

7.In view of the above, this Civil Miscellaneous Appeal is adjourned.

sd/-
11/03/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

THE SUBORDINATE JUDGE,
THE MOTOR ACCIDENT CLAIM TRIBUNAL),
KUZHITHURAI.

ORDER

IN

CMP (MD) No.12273 of 2019

IN

CMA (MD) No.486 of 2018

Date :11/03/2020

MS/VR/SAR-1/12.05.2020/3P.2C