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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.09.2021

Delivered On : 01.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.485 of 2013

and

M.P.(MD)No.1 of 2013

The Divisional Manager,
New India Assurance Co. Ltd.,
242-B, Kamarajar Road,
Madurai 625 009.

... Appellant/2nd Respondent

Vs.

1.Arun Daniel
2.M.G.Royappan
3.Santiago Boobalarayar
4.Arockia Mary

... 1st Respondent/Claimant

... 2 to 4 Respondents/
Respondents 1,3&4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 19.10.2012 made in M.C.O.P.No.58 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Ramanathapuram.

For Appellant	: Mr.B.Vijay Karthikeyan
For Respondent Nos.1, 3 & 4	: Mr.K.Kumaravel
For 2 nd Respondent	: Mr.P.Muthudurai

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.58 of 2011 dated 19.10.2012, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ramanathapuram.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the respondents 2 to 4 herein are the respondents 1, 3 and 4 in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.58 of 2011, claiming compensation for the death of one Francis Rekka, in



an accident that took place on 05.09.2009. The Tribunal has awarded a sum of Rs.12,49,000/- (Rupees Twelve Lakhs and Forty Nine Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.58 of 2011 is as follows:

On 05.09.2009, at about 03.30 p.m., when the deceased and others were travelling in an Alto car bearing registration No.TN-59-TMP-9209 from Velankani to Devipattinam, due to some mechanical defect, the vehicle become uncontrollable and dashed against a tamarind tree. The deceased and others sustained injuries. All the injured persons were admitted in Madurai Meenakshi Mission Hospital. The deceased died due to the accident. The deceased was aged about 25 years. She had completed Engineering and was working in a private institutions and was earning a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) per month and she was arranging for a job in Singapore. The petitioner and the respondents 3 and 4 are the dependants of the deceased.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The manner of the accident as narrated in the petition is denied. The driver of the car drove the vehicle in a rash and negligent manner along the right side of the road and dashed against a Tamarind tree. Six persons travelled in the car against the permitted limit. The age, profession and income of the deceased are all denied.

5.The first respondent was set as exparte. On the side of the claimants, five witnesses were examined and 45 documents were marked. On the side of the respondents, no witnesses was examined and no documents was marked. After trial, the Tribunal has awarded a sum of Rs.12,49,000/- (Rupees Twelve Lakhs and Forty Nine Thousand only) as compensation to be paid by the respondents 1 and 2 therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the award is excessive. The driver of the car was negligent and he was responsible for the accident. The claimant was the driver of the vehicle and that the accident happened only due to his negligence. The claimants and the respondents 3, 4 are not entitled for any compensation. The Tribunal has held that the deceased was negligent and was responsible for the accident, but the Tribunal has wrongly awarded compensation in favour of the claimants. A judgment of the Hon'ble Supreme Court reported in **2012 ACJ 1** is cited, wherein it is held that the driver who was at fault on account of his negligence, cannot claim compensation even under Section 163(A) of the Motor Vehicles Act. The respondents 3 and 4 are not the dependants of the



deceased and they are not entitled to any compensation. The award passed under various heads is excessive.

7. On the side of the appellant, it is further stated that the statement of the claimant that there was an engine fault that leads to the accident is wrong and that in Ex.P3, M.V. Report, it is clearly stated that the accident was not due to any mechanical defects.

8. The learned counsel for the appellant would rely upon a judgment of the Hon'ble Supreme Court in the case of **Dhanraj v. New India Assurance Co. Ltd., and another** reported in **2005 ACJ 1**, wherein it is stated as follows :

"Motor Insurance - comprehensive policy - injury to owner-insured - Liability of insurance company - Section 147 does not require insurance company to assume risk for death or bodily injury to owner of vehicle - Policy does not cover any risk for injury to the owner himself"

9. The learned counsel for the appellant would rely upon a judgment of this Court in the case of **New India Assurance Co. Ltd., v. Latha and others** reported in **2018 (1) TNMAC 466**, wherein it is stated as follows :

"Liability of insurer in respect of owner - Contractual and not statutory - comprehensive/package policy in respect of two-wheeler- policy covering compulsory personal accident cover for owner and driver - liability of insurer limited to terms of Special Contract between insurer and insured - SC followed - in instant case, as per policy, personal accident cover limited to Rs.1,00,000/- - claimants, therefore, entitled to Rs.1,00,000/- - compensation of Rs.14,31,000 awarded by Tribunal reduced to Rs.1,00,000/- with 7.5% p.a."

10. The learned counsel for the appellant would rely upon another judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd., v. Rajni Devi and others** reported in **2018 ACJ 1441**, wherein it is stated as follows :

"Owner- insured-death of - claim application - Maintainability of - owner and another person were riding motorcycle and no evidence who was driving the vehicle - motor cycle went out of control resulting in death of both the riders - insured had paid extra premium covering his personal accident insurance - legal representatives of the deceased owner filed claim under Section 163-A-whether claim under Section 163 A for death of owner is maintainable - Held: no;



owner cannot be a third party; amount of Rs.1,00,000 admissible under personal accident insurance is payable."

11. On the side of the respondents, it is stated that the deceased was not negligent. The evidence of P.W.1 is acceptable and that due to sudden mechanical defect, the vehicle dashed against the tamarind tree. There was no evidence on the side of the respondents to disprove the case of the claimant and prayed the appeal to be dismissed.

12. The learned counsel for the respondents would rely upon a judgment of this Court in the case of **United India Insurance Co. Ltd., v. K.Paruvatham** reported in **2012 (1) TNMAC 111**, wherein it is stated as follows :

"Insured, as a person, being legal heir of deceased in a different capacity, is entitled for compensation under Section 166 - Therefore, insurer in that event cannot escape from indemnifying insured simply because insured happens to be recipient - had there been any other legal heir apart from insured, they would have maintained claim being entitled for compensation - therefore, insured being sole legal heir in a dual capacity entitled to be indemnified by insurer and entitled to be recipient of such claim."

13. The learned counsel for the respondents would rely upon another judgment of this Court in the case of **National Insurance Co. Ltd., v. Krishnan** reported in **2013 (1) TNMAC 729**, wherein it is stated as follows :

"When additional premium paid to cover personal accident cover to owner-cum-driver, merely because owner did not drive, it cannot be contended that contract of insurance cannot be extended to cover owner as an occupant of vehicle - driving of vehicle is not a criteria to determine enforceability of contract of insurance - claimant/owner, held entitled to maintain claim against insurer alone and insurer liable to pay compensation."

14. On the side of the appellant, it is stated that the matter in issue in the case cited above is whether the owner who is not on the wheels is entitled for compensation and that the facts of the case is not applicable to the facts of the present case.

15. It is seen that P.W.1, P.W.2 and P.W.4 were examined as eye witnesses. They have deposed that due to mechanical defect, the accident has been taken place. Ex.P1, FIR, Ex.P5, chargesheet and Ex.P6 were against the first respondent herein. Ex.P3, M.V. Report was not discussed by the Tribunal. The driving licence of the first



respondent was marked as Ex.P7. In the M.V. Report, it is stated that the accident was not due to any mechanical defect. Hence, it is decided that the accident took place only due to the rash and negligent driving of the first respondent.

16.It is seen that the first respondent herein/ claimant is responsible for the accident. Though this claim is made in his individual capacity as the husband of the deceased, as the person responsible for the accident, he is not entitled to claim any amount. Hence, it is decided that the claimant/ first respondent herein is not entitled for compensation. But the appellant cannot be exonerated on this ground. The respondents 3 and 4 herein, who are the parents of the deceased, are entitled for compensation.

17.The B.E. Certificate of the deceased was marked as Ex.P9. The professional certificate was marked as Ex.P10. The passport was marked as Ex.P12. The mark statement was marked as Ex.P13. No document was filed to prove that the deceased was earning Rs.25,000/- at the time of accident. The educational qualification and the certificates Ex.P9, Ex.P10 and Ex.P13 reveals that the deceased is a technically qualified person. The deceased might have earned Rs.9,000/- (Rupees Nine Thousand only) and the decision of the Tribunal as to the income of the deceased is reasonable. The age fixed by the Tribunal as per the passport, Ex.P12 is 25 years. Hence, multiplier '17' is applicable. The award fixed by the Tribunal under the head love and affection and funeral expenses are reasonable. The total compensation as fixed by the Tribunal [Rs.12,49,000/- (Rupees Twelve Lakhs and Forty Nine Thousand only)] is reasonable.

18.In the result, this Civil Miscellenaous Appeal is **disposed of** and the order of the Tribunal is modified to the effect that the first respondent herein /claimant is not entitled for compensation. The respondents 3 and 4, who are the parents of the deceased, are entitled for compensation. It is decided that the respondents 3 and 4 herein are entitled to a sum of Rs.6,24,500/- (Rupees Six Lakhs Twenty Four Thousand and Five Hundred only) each as compensation with proportionate interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent is entitled for the cost.

19.The appellant herein is directed to deposit Rs.12,49,000/- (Rupees Twelve Lakhs and Forty Nine Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the respondents 3 and 4 herein are permitted to withdraw their shares as mentioned above, with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the



appellant herein. The respondents 3 and 4 herein are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Ramanathapuram.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-36669[F] dated 01/12/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-36663[F] dated 01/12/2021)

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MGJ(28.01.2022) 6P 6C