BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	31.03.2021
Date of Judgment	01.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1059 of 2015
and
MP(MD)No.1 of 2015

The Divisional Manager,
United India Insurance Company Limited,
Sitalakhmi Complex, Tirunagar,
Madurai. : Appellant/2nd Respondent

Vs.

1.Tmt.Vijayalakshmi
2.Minor Damodaran
3.Avvankkalai
4.Tmt.Neelavathi : R1 to R4/Petitioners
(Minor 2nd respondent rep. by mother and natural guardian 1st respondent)
5.Eswaran : 5th Respondent/1st Respondent
(5th Respondent exparte before the tribunal)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 05.02.2015 made in MCOP No.534 of 2013 on the file of the Motor Accident Claimants Tribunal (Special District Judge for MCOP Cases), Madurai.

For Appellant : Mr.V.J.Kumaravel
For R1 to R4 : Mr.M.Sarangan
For 5th Respondent : Mr.N.Vallinayagam

J U D G M E N T

Challenge made in this Civil Miscellaneous Appeal is to the award, dated 05.02.2015 made in MCOP No.534 of 2013 on the file of the Motor Accident Claimants Tribunal (Special District Judge for MCOP Cases), Madurai.

2.The short facts of the case is that on 14.08.2011 at about 1.30 pm, while Rajenth Kumar, Murugapandi, Suresh and three others travelling in Ambassador Car TNN-0369, near Sankar Godown at

Usilampatti Theni Main Road, the driver of the Car drove it in a rash and negligent manner and suddenly dashed against a tamarind tree, thereby caused the accident. Due due to the accident, all the said persons were sustained multiple grievous injuries all over the body and died on the spot itself. The legal heirs of the deceased Suresh filed a claim petition in MCOP No.534 of 2013 claiming compensation of Rs.10,00,000/- for the death of the deceased.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.9,25,000/- together with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant/2nd respondent argued that the policy issued to the owner of the Car TNN-0369 was an "Act Only Policy" and the occupants of the Car were not covered under the policy and the owner of the Car has not chosen to pay extra premium for covering the risk of bodily injury or death of the occupants of the Car and the policy covers "Personal Accident" benefit for 5 unnamed passengers of the Car and accordingly, the appellant/2nd respondent is liable to pay Rs.2,00,000/- per passenger in the event of death of the passengers and the claimants are not third parties and the policy issued to the owner of the Car is only a Liability Only Policy and not a comprehensive/package policy, but the tribunal wrongly came to the conclusion that Ex.R1 policy was comprehensive policy and awarded as if the claimants are 3rd parties and therefore, the compensation awarded by the tribunal is not correct and prays that the Civil Miscellaneous Appeal has to be allowed.

6.On the other hand, the learned counsel appearing for the 1 to 4/claimants submitted that the claimants are 3rd parties and as Ex.P1 policy was comprehensive policy, the claimants are entitled to compensation as claimed and the tribunal on proper appreciation of materials available on record, awarded reasonable compensation and prays for dismissal of the Civil Miscellaneous Appeal.

7.In this case, the insurance policy paid by the owner of the vehicle (Ex.R1) was carefully perused. Ex.R1 policy is a Liability Only Policy. The owner of the Car paid premium for 5 unnamed passengers. As per Ex.R1, 5 unnamed passengers are each entitled to Rs.2,00,000/-, when they met with an accident. In this case, the deceased are occupants of the Car and hence, they are not travelled as 3rd parties. Further, Ex.R1 was Liability Only Policy and the owner paid premium for 5 unnamed passengers. Hence, as per Ex.R1, the claimants are only entitled to Rs.2,00,000/- as compensation. But the tribunal without considering these aspects, has awarded compensation of Rs.9,25,000/- to the claimants, which is not correct.

8.In fine, the Civil Miscellaneous Appeal is allowed. The award, dated 05.02.2015 passed in MCOP No.534 of 2013 by the Motor Accident Claims Tribunal (Special District Judge), Madurai, is set aside. The respondents 1 to 4/claimants are totally entitled to Rs.2,00,000/- as compensation together with interest 7.5% p.a from the date of claim petition till the date of realization. The appellant Insurance Company is at liberty to get back the deposited amount before the tribunal in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Accident Claims Tribunal/
Special District Judge for MCOP Cases,
Madurai.

2.The Record Keeper,(2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.1059 of 2015
01.07.2021

KMK(CO)
KB(27.08.2021) 3P 4C