IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.104 of 2022
&
C.M.A.No.1832 of 2018
&
C.M.P.No.687 of 2022

C.M.A.No.104 of 2022

National Insurance Co. Ltd.,
2nd Floor, 81 – D, Chetty Street,
Opp. Bus Stand, Tiruchengode,
Namakkal District. ...Appellant

Vs

1.Chandra

2.Minor. Sakthivel

3.Minor. Sharmila

4.Pappathi

5.Allaudeen ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 11.07.2017 made in M.C.O.P.No.778 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 & 4 : Mr.C.Paraneedharan

For Respondents 2 & 3 : Minors (Rep. by R1)

For Respondent 5: No Appearance

C.M.A.No.1832 of 2018:

1.Chandara

2.Minor. Sakthivel

3.Minor. Sharmila

4.Pappathi ...Appellants

Vs

1.Allaudeen

2.National Insurance Co. Ltd.,
2nd Floor, 81 – D, Chetty Street,
Opp. Bus Stand, Tiruchengode,
Namakkal District. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree in M.C.O.P.No.778 of 2012 dated 11.07.2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants : Mr.C.Paraneedharan

For Respondent 2: Mr.S.Arun Kumar

For Respondent 1: Ex parte

JUDGEMENT

The two appeals arise from out of the Order in M.C.O.P.No.778 of 2012 of the Motor Accident Claims Tribunal, Principal District

Judge, Namakkal.

2. C.M.A.No.104 of 2022 is filed by the Insurance Company seeking exoneration on the ground that the policy does not cover the third party driver. C.M.A.No.1832 of 2018 is filed by the claimants seeking enhancement of the claim. The facts in brief which forms the prelude for the above appeal are as follows.

3. The petitioners who are the legal representatives of the deceased Kannan had filed the above claim petition seeking compensation for the death of the said Kannan in a road accident. It is their case that the deceased was carrying on garments business earning not less than Rs.10,000/- per month. The mother, wife and children of the deceased Kannan are the petitioners. It is the case of the petitioners that on 15.06.2012 at about 11.30 P.M. the deceased was proceeding on the Thiruchengode to Vellore road in his Hero

Honda Splendour Pluz motor cycle bearing TN 33 AV 4084. At that time, TVS XL vehicle bearing registration TN 34 J 3955 driven in a rash and negligent manner dashed against the deceased vehicle, thereby causing damage to the vehicle of the deceased and the deceased sustained grievous injuries and had died on the spot. The claim has been made only against the owner of the motorcycle which the deceased was riding and its Insurance Company.

4. The 1st respondent remained absent and set ex parte.

5. The 2nd respondent Insurance Company had filed a counter denying the accident and their liability to pay compensation. The 2nd respondent Insurance Company had contended that the instant proceedings is initiated against the owner of the offending vehicle, namely, TVS XL bearing registration no.TN 34 J 3955, instead of initiating proceedings against the rider of the vehicle at that time. The

deceased admittedly is a tortfeasor and therefore not entitled to be compensated. The respondent Insurance Company has put the petitioners to strict proof of the accident, income, employment etc., of the deceased.

6. The Tribunal below on considering the evidence observed that it is not open to the respondent Insurance Company to compel the petitioners to file a petition either under Section 163 A or Section 166 of the Motor Vehicles Act, were the petition is filed under Section 163 A, then the Tribunal without making any enquiry has to pass an award on the basis of the structured formula as contemplated in Schedule II of the Motor Vehicle Act. The Tribunal has awarded a sum of Rs.6,09,500/- which is subsequently reduced to a sum of Rs.4,06,333/-.

7. Challenging the order directing the deposit to be made by the

2nd respondent Insurance Company, the Insurance Company has filed the appeal in C.M.A.No.104 of 2022. The claimants on the other hand filed C.M.A.No.1832 of 2018 seeking enhancement of the award amount.

8. Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company would submit that the Insurance Company does not have any liability to compensate the petitioners since the policy does not cover a third party driver.

9. Per Contra, Mr.C.Paraneedharan, learned counsel appearing on behalf of the petitioners / claimants would submit that it is open to the Insurance Company to pay and recover the amounts from the 1st respondent owner of the vehicle.

10. Heard the learned counsels on either side.

11. The learned counsel appearing for the Insurance company had submitted that the policy in respect of the Hero Honda Splendor motorcycle in which the deceased travelled does not cover third party driver and a perusal of the same indicated so. Therefore, the Insurance Company cannot be made liable to indemnify the 1st respondent for the injury sustained by the deceased. Therefore, Civil Miscellaneous Appeal No.104 of 2022 filed by the Insurance Company is allowed. The Insurance Company is exonerated and the petitioners shall proceed to claim the award amount from the 1st respondent.

12. The learned counsel for the petitioners / claimants Mr.C.Paraneedharan fairly submitted that the structured amount given under Column I is erroneous and it is only a sum of Rs.5,00,000/- that

is payable, under the head of Structured Amount for the age group between 35 years to 40 years.

13. The award of the Tribunal below is re-worked as follows:

Heads	***Award of the Tribunal***	***Award of the High Court***
Structured Amount for the age group between 35 years to 40 years	**Rs.6,00,000/-**	**Rs.5,00,000/-**
Loss of estate	Rs.2,500/-	Rs.2.500/-
Funeral Expenses	Rs.2000/-	Rs.2000/-
Loss of Consortium	Rs.5000/-	Rs.5000/-
Grand Total	Rs.6,09,500/-	Rs.5,09,500/-
1/rd Standard Deduction	**Rs.4,06,333/-**	**Rs.3,39,667/-**

14. The Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a

copy of this Judgement, to the credit of M.C.O.P.No.788 of 2012. On such deposit, the claimants are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

15. The share of the minor claimants, namely, the 2nd and 3rd claimants is directed to be deposited in Fixed Deposit in any one of the Nationalised Banks till they attain majority. On such deposit, the 1st claimant being the mother of the minor claimants is permitted to withdraw the accrued interest once in every three months for the welfare of the minor appellants. In all other respects the award of the Tribunal below stand confirmed.

16. C.M.A.No.104 of 2022 filed by the Insurance Company is allowed. C.M.A.No.1832 of 2018 filed by the claimants is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No

costs.

29.06.2022

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Index : Yes/No
Speaking order/non-speaking order

To,

The Motor Accidents Claims Tribunal,
Principal District Judge,
Namakkal.

P.T.ASHA, J.,

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C.M.A.No.104 of 2022

29.06.2022