BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.09.2022

Pronounced on : 11.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1050 of 2012

The United India Insurance Co.Ltd.,
represented through its Branch Manager,
Tenkasi. ...Appellant / respondent

Vs

1.Samuthirakani

2.Minor.Maheswari

3.Minor.Lalitha

4.Minor.Murugesan

5.Mariammal ... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 23.12.2011 passed in MCOP No.297 of 2007 on the file of the Hon'ble Motor Accidents Claims Tribunal (Principal Sub Court), Tenkasi, and set aside the same.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.J.Karthick

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.297 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi. Appellant herein is the respondent. The respondents herein are the claimants in the claim petition.

2.Brief substance of the claim petition is as follows:

On 29.04.2006, at about 8.30 pm, when the deceased was riding his two wheeler, bearing registration number TN 76 3405 along the Tenkasi-Pavurchattiram Road, near KTC bus stop, in a slow and cautious manner, all of a sudden a cyclist crossed the road. When the deceased tried to avoid hitting against the cyclist, he fell on the road side ditch and died on the spot. The petitioners are his dependants and they claim a sum of Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed by the respondent in the claim petition, is as follows:

The vehicle was not insured with the respondent. The deceased was entitled only to Rs.1,00,000/- as the owner cum driver of the vehicle. The claim is excessive.

4.Four(4) witnesses were examined and eight(8) documents were marked on the side of the petitioner. One(1) witness was examined and two(2) documents were marked on the side of the respondent. Four(4) documents were marked as witness documents. The Tribunal awarded a sum of Rs.1,50,000/- as compensation.

5.Against the award, the appellant filed this appeal on the following grounds:

The Tribunal failed to consider that the deceased was the owner of the vehicle and the petition under the Motor Vehicle Act is not maintainable. Since the deceased is the owner of the vehicle, the question of no fault liability will not arise.

6.On the side of the appellant it is stated that an owner of the vehicle can not claim compensation from his own insurance company. The insurance company is liable to pay Rs.1,00,000/- towards personal liability. But the balance of Rs.50,000/- cannot be claimed by the claimants. Only when the owner of the vehicle is liable to pay compensation, the insurance company has to indemnify the owner. The claimants cannot proceed against the insurance company in his individual capacity.

7.On the side of the appellant a judgment of this Court in **C.M.A.(MD)No.249 of 2015 dated 07.01.2021** is cited. Wherein, this Court *suo motu* impleaded the District Collector and ordered him to pay compensation.

8.On the side of the respondents it is stated that since the owner of the vehicle died in the accident, there is no question of impleading the owner in this case. The policy is a comprehensive policy. The appellant admits the liability of Rs.1,00,000/-. The award of compensation, fixed by the Tribunal is very low. Even in hit and run cases, the minimum award is Rs.5,00,000/-.

9.On the side of the respondents, a judgment of the Hon'ble High Court of Madras, reported in **2013 (1) TN MAC 120** in the case of **Komeravel Gounder vs Bajaj Allianz General Insurance Company,** is cited, wherein it is held that,

> *"13.So far as the merit of the Appeal is concerned, the only submission made on behalf of the Appellant-Company is that the deceased in the present case was Owner-cum-Driver, therefore, the liability of the Insurance Company is limited to Rs.2.00 lakhs as mentioned in the Insurance Policy. No other submission has been advanced on behalf of Appellant. The findings of the learned Tribunal in respect of other issues have not been challenged.*

This Court has awarded compensation for an accident that took place on the negligence of the deceased himself.

10.On the side of the respondents, a judgment of the Hon'ble High Court of Sikkim, reported in **2014(2) TN MAC(Sikk.)**, in the case of **Branch Manger, Oriental Insurance Co.Ltd., vs Madansha Sherpa and others**, is cited, wherein it is held that,

> *Package Policy - Liability in respect of Owner -cum-Driver - Extent - Insured paid Rs.13,458 as premium for Package Policy in respect of Bolero Pickup Vehicle - Insurer contending that its liability limited to only Rs.2 Lakhs in view of additional payment of Rs.100 towards premium to cover risk of Owner-cum-Driver and not to extent of Rs.4,55,000/- as determined by Tribunal in*

claim under Section 163-A - Contention that Package policy is not Comprehensive Policy - Rejected - Package Policy is a Comprehensive Policy and would cover liability of Insurer for payment of compensation for occupant in car - SC in Balakrishnan followed - Payment of premium of Rs.13,458 also shows that it was a comprehensive policy - Therefore, deceased, who was an Owner - cum-Driver was fully covered under policy - Insurar liable to pay compensation of Rs. 4,55,500/- as determined by Tribunal."

11.It is seen that the deceased was the owner of the vehicle and he died on the spot. The claimants are the dependants of the deceased owner of the vehicle. In the above circumstances, impleading the owner as a party to the case is not feasible.

12.It is seen that additional premium was paid for the owner of the vehicle and the policy is a comprehensive policy. The Tirbunal has awarded Rs.1,50,000/- as compensation. The appellant is admitting his liability for a sum of Rs.1,00,000/-. This appeal is filed only with regard to the balance of Rs.50,000/- alone. The citations filed on the side of the appellant, is not applicable to the facts of the present case. The case mentioned in the citation is with regard to an accident by a hit and run vehicle. Hence, the facts of the case cited, is not applicable to the facts of the present case. The cases cited on the side of the respondents, are applicable to the facts of the present case.

13.Considering the judgment of the Hon'ble Division Bench of this Court, it is decided that the compensation awarded by the Tribunal is reasonable and there is no ground sufficient enough to interfere with the orders of the tribunal and the appeal is dismissed with the following directions:

(i) The appellant / The National Insurance Company is directed to deposit the quantum of compensation awarded by the Tribunal, Rs.1,50,000/- (Rupees One Lakh and Fifty thousand only) (less the amount already deposited) together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.297 of 2007 on the file of the Motor Accidents Claims Tribunal /Principal Sub Court, Tenkasi, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The claimants are entitled for an equal share of Rs.30,000/- (Rupees Thirty Thousand only) each, as partitioned by the Tribunal;

(iii) On such deposit being made, the respondents 1 and 5/ claimants are at liberty to withdraw their respective share of Rs.30,000/- (Rupees Thirty Thousand only) each with proportionate interest.

(iv) The respondents 2 to 4/claimants (minors) herein are entitled for an amount of Rs.30,000/- (Rupees Thirty Thousand only) with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. No costs.

11.10.2022

Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accidents Claims Tribunal (Principal Sub Court), Tenkasi.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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