



C.M.A.(MD)No.1653 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.08.2022

Delivered On : 30.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1653 of 2010

1.V.Arjunan

2.Indragandhi

3.Menakagandhi

4.Minor.Thirukumaran

.. Appellants /claimants

Vs.

1.A.Padmanabhan

2.The Branch Manager,

New India Assurance,

No.147, Salai Road,

Ramanathapuram,

Ramanathapuram District.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 05.08.2010, in M.C.O.P.No.3 of 2008, on the file of the Motor Accidents Claims Tribunal, Paramakudi.



C.M.A.(MD)No.1653 of 2010

For Appellants

: Mrs.Rajeswari

for M.S.Johny Basha

For Respondents

: Mr.J.S.Murali for R2

: No appearance for R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order, dated 05.08.2010, in M.C.O.P.No.3 of 2008, on the file of the Motor Accidents Claims Tribunal, Paramakudi. The appellants herein are the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the petition, in M.C.O.P.No.3 of 2008, is as follows:-

On 15.07.2007, at about 1.00 pm., when the deceased – Rajeswari was walking along the left side mud road, along the Paramakudi-Ilayankudi main road, a TATA Sumo, bearing Registration No.TN-67-W-5856 was driven by its driver in a rash and negligent manner, dashed against the pedestrian. She was taken to the Government Hospital, there, she was declared as dead. She was running a Grocery and Vegetable shop and was earning Rs.300/- per day. The claimants are her dependents and they claimed a sum of Rs.4,00,000/- as compensation.



C.M.A.(MD)No.1653 of 2010

3. Brief substance of the counter filed by the second respondent in M.C.O.P.No.3 of 2008, is as follows:

The car was driven by its driver in a slow and cautious manner. It was the pedestrian, who without observing the traffic, try to cross the road and invited the accident. The age, income and profession are to be proved. The amount claimed is excessive.

4. On the side of the claimants, 2 witnesses were examined and 8 documents were marked. On the side of the respondents, 4 witnesses were examined and 3 documents were marked. After considering both sides, the Tribunal awarded a sum of Rs.4,26,000/- as compensation to be paid by the first respondent/owner of the vehicle.

5. Against the order, the appellants have filed this appeal on the following grounds:-

Non availability of fitness certificate cannot be a criteria to deny the liability of the Insurance Company. The Tribunal failed to consider that there was valid permit and the policy was inforce. No such condition was prescribed in the policy and the Tribunal cannot modify the terms of policy and the liability ought to have fixed against the Insurance Company.



C.M.A.(MD)No.1653 of 2010

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6. On the side of the appellants, it is stated that only on the ground that there is no fitness certificate, the Tribunal has fixed liability against the owner of the vehicle. At least pay and recover order to be passed. A judgment of this Court made in C.M.A.(MD)No.137 of 2006 (National Insurance Company Ltd., V. Veerammal and others), dated 15.09.2010 is cited.

7. On the side of the second respondent, it is stated that the violation of policy was proved through oral and documentary evidence. The Tribunal has observed that the owner of the vehicle is liable. The Tribunal has exonerated the Insurance Company and fixed the liability only against the owner. There is no necessity for the Insurance Company to file any separate case, and the Insurance Company must be permitted to proceed before executing Court. A Full Bench of the Kerala High Court at Ernakulam, made in M.A.C.A.No.2030 of 2015 (Pareed Pillai V. Oriental Insurance Co. Ltd.), is cited.

8. It is seen that there is no dispute regarding the quantum fixed by the Tribunal. The Tribunal has fixed the liability on the owner of the vehicle, on the ground that the fitness certificate was not available for the offending vehicle. A Full Bench of the Kerala High Court at Ernakulam, made in M.A.C.A.No.2030 of 2015



C.M.A.(MD)No.1653 of 2010

(Pareed Pillai V. Oriental Insurance Co. Ltd.), has decided that absence of fitness certificate of a vehicle is a fundamental breach by the insured, which entitles the insurer a right to recover.

9. In view of the decision of the Full Bench of Kerala High Court, it is decided that the Insurance Company is liable to pay compensation to the claimants and the Insurance Company is at liberty to recover the amount from the owner of the vehicle.

10. The appeal is allowed and the order of the Tribunal is modified. The Insurance Company is directed to pay compensation of Rs.4,26,000/- with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order and the Insurance Company is permitted to recover the same from the owner of the vehicle.

11. On such deposit being made, the Tribunal may permit the major claimants to withdraw their shares as apportioned by the Tribunal with interest and costs on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share of the minor claimant / fourth appellant 3 herein in any one of the Nationalised Banks, in a Fixed



C.M.A.(MD)No.1653 of 2010

Deposit scheme, till he attains majority. The first appellant, who is the father and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any. No Costs.

30.08.2022

Index : Yes/No

Internet : Yes/No

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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.



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C.M.A.(MD)No.1653 of 2010

To

1.The Motor Accidents Claims Tribunal,
Paramakudi.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1653 of 2010

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1653 of 2010

30.08.2022