BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
07.03.2022	13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.238 of 2019
and
C.M.P(MD).No.3204 of 2019
and
Cross Objection(MD).No.40 of 2021

C.M.A(MD).No.238 of 2019:

The Branch Manager,
United India Insurance Company Limited,
Divisional Office,
Jeevajothi Buildings,
Salai Road, Dindigul-1. ... Appellant/2nd Respondent

Vs

1.Palaniammal
2.Lakshmikanth
3.Suhalakshmi
4.Minor Duwaraga Sri ... Respondents 1 to 4/Petitioners

(Minor 4th respondent through her Maternal Grandmother and next friend the first respondent Tmt. Palaniammal herein)

5.S.Vellaisamy ... 5th Respondent/1st Respondent

PRAYER in C.M.A(MD).No.238 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the Judgment and Decree dated 16.07.2018 passed in M.C.O.P.No.983 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Dindigul.

CROS. OBJ(MD)No.40 of 2021:

1.Palaniammal

2.Lakshmikanth

3.Suhalakshmi

4.Minor Duwaraga Sri

(Minor 4th Petitioner through her Maternal Grandmother and next friend the first Petitioner Tmt. Palaniammal herein)
... Petitioners/Respondents 1 to 4

Vs.

1.The Branch Manager,
United India Insurance Company Limited,
Divisional Office,
Jeevajothi Buildings,
Salai Road,
Dindigul-1, ... 1st Respondent/Appellant

2.S.Vellai Samy ... 2nd Respondent/
5th Respondent

PRAYER in Cross Objection(MD).No.40 of 2021: Cross Objection(MD). No.40 of 2021, to call for the records relating to Cross Objections filed against C.M.A(MD).No.238 of 2018 as against the order passed in M.C.O.P.No.983 of 2012 dated 16.07.2019 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dindigul.

In C.M.A(MD).No.238 of 2019

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Pugalendhi
for R1 to R3
R4 Minor represented by R1
No appearance for R5

In Cross Objection(MD).No.40 of 2021

For Appellant : Mr. S.Pugalendhi
For Respondents : Mr.G.Prabhu Rajadurai
for R1
R2-Exparte

COMMON JUDGMENT

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The above Civil Miscellaneous Appeal and the Cross Objection are filed against the award and decree dated 16.07.2018 passed in M.C.O.P.No.983 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dindigul, by the Insurance Company and the claimants respectively.

2. For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3. The 1st petitioner is the wife and the 2nd and 3rd petitioners are the son and daughter and the 4th petitioner is the minor granddaughter and they are depending on the income of the deceased Raman.

4. The case of the claimants before the Tribunal is that the deceased, by name, Raman was a painter. On 15.02.2011, at about 06.30 p.m., the deceased Raman, while he was riding his bicycle, in a place nearby C.S.I. Church, Rajendra Theatre Road, Round Road Pudur, Dindigul Town, a four wheeler bearing Chasis No.AGRO 4 2011 01 1115 meant for mixing concrete which was driven in a rash and negligent manner and without sounding horn, dashed against the said Raman and he has sustained severe injury on his head and died on the spot. Alleging that the accident had taken place due to the rash and negligent driving of the concrete mixture vehicle, the claim petition has been filed by the family members of the deceased claiming compensation of Rs.12,00,000/-.

5. The appellant /Insurance Company sought for exoneration of liability on the ground that the nature of the accident does not cover under the policy. The policy is contractor plant and machinery policy. The alleged vehicle is road laying plant and machinery and not a motor vehicle which could not be operated on road and there would not be a question of rash and negligence. The first respondent has taken "CONTRACTORS PLANT AND MACHINERY POLICY" which specifically exclude the "Loss or damage whilst in transit" to one location to another location.

6. The claimants have examined the first appellant, namely, Palaniyammal as P.W.1 and one Prabaharan as P.W.2 and marked five documents as Ex.P1 and Ex.P2. The second respondent has examined its Executive Officer - G.Ganesh as R.W.1 and marked one documents as Ex.R1.

7. The main defence of the second respondent/Insurance Company is that the first respondent has taken ''CONTRACTORS PLANT AND MACHINERY POLICY'' which specifically excluded the ''Loss or damage whilst in transit'' to one location to another location; that the alleged vehicle is a road laying plant and machinery and it is not a motor vehicle; that since the said vehicle is not a motor vehicle, the question of rash and negligent driving, does not arise and that since the deceased has invited the accident, the respondents are not liable to pay compensation.

8. It is pertinent to note that the accident and the involvement of the concrete mixing four wheeler are not in dispute. But the dispute is as to whether the driver of the concrete mixture four wheeler was responsible or the negligence of the deceased Raman's was responsible for the accident. No doubt, R.W.1 in his chief examination, would say that Ex.R1/policy was issued not under the Motor Vehicle Act and as such, the claim petition filed under the Motor Vehicles Act is not maintainable.

9. R.W.1 would also admit that they have collected premium as TPL all accident in Ex.R1. No doubt, as rightly pointed out by the second respondent side, Ex.R.1/Policy reads as ''CONTRACTORS PLANT AND MACHINERY INSURANCE POLICEY''. The learned counsel for the second respondent has relied on the Exception clause in Ex.R.1 and argued that the second respondent is not liable to pay the compensation. In Ex.R.1 - Exceptions Clause (H) read as follows:

> *''The Company shall not be liable under this policy in respect of ....H) loss or damage whilst in transit, from one location or another location (Public Liability will not be payable while contractors, plant and Machieries are on Public Roads)*

But, as rightly pointed out by the petitioners' side, in Ex.R.1, it has been specifically mentioned that the premium was paid towards TPL all accident.

10. In similar circumstances, in respect of contractor plan and machinery insurance policy, Mr.Justice G.R.SWAMINATHAN passed the judgment in ***C.M.A(MD).No.552 of 2017 dated 12.10.2017*** and has held that the Insurance Company is not liable to pay the compensation.

11. The learned counsel for the Insurance company/appellant drew the attention of this Court from the examination of P.W.2 that in his evidence, he/P.W.2 said that he was talking with other person near C.S.I. Church, Round Road Pudur, Rajendra Theatre Road, at about 06.30 p.m. On 15.02.2011 and that the injured Raman was proceeding in his bicycle from south to north and in that place, one concrete mixer vehicle which was moving in backward direction has dashed against the painter Raman's cycle and as a result of which, the said Raman died on the spot itself.

12. From the evidence of P.W.2, the manner of the accident has been drastic that the concrete machinery vehicle on the backward direction and dashed against the pedestrian. In view of the specific clause contained in the policy and in view of the above said decision in ***C.M.A(MD).No.552 of 2017 dated 12.10.2017*** in the case of ***The Manager, United India Insurance Company Limited Vs. Saranya and others,*** I have no hesitation to hold that the Insurance Company is not liable to pay the compensation, since the nature of the injury is not covered under the policy (Ex.R1). **Accordingly, this Civil Miscellaneous Appeal filed by the Insurance Company is allowed and it is open to the claimants/petitioners to make a claim from the owner of the vehicle.**

13. Aggrieved over the award passed by the Tribunal, the claimants filed Cross Objection (MD)No.40 of 2021, on the ground that the income of the deceased fixed by the Tribunal is very low.

14. As per the Ex.P5, the deceased is a Painter and the accident is of the year 2001 and hence, this Court enhanced the

monthly income of the deceased Raman at Rs.10,000/-. As per the judgments of the Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** and ***Smt. Sarla Varma and other vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC)***, the Tribunal deducted 1/4th towards his personal expenses and correctly applied the multiplier '11' and awarded the compensation and hence, loss of pecuniary benefits is reassessed as under:-

Calculation:

Notional income = Rs.10,000/-
10% Future Prospects = Rs.1,000/-
Total = Rs.10,000 /- + Rs.1,000 = Rs.11,000/-

Loss of pecuniary benefits

= Rs.11,000/- x 11 x 12 x 3/4
= Rs.10,89,000/-

15. Accordingly, the award of the Tribunal in M.C.O.P.No.983 of 2012, is modified as follows:

Sl. No.	***Particulars***	***Amount granted by the Tribunal***	***Amount granted by this Court***
1.	Loss of pecuniary benefits	Rs.5,98,950/-	Rs.10,89,000/-
2.	Loss of consortium for first claimant	Rs.40,000/-	Rs.40,000/-
3.	Loss of love and affection for second to fourth claimants	Rs.15,000/-	Rs.1,20,000/- (Rs.40,000 + Rs.40,000+ Rs.40,000)
5.	Funeral expenses and loss of Estate	Rs.15,000/-	Rs.15,000/-
	Total	Rs.6,68,950/-	Rs.12,64,000/-

16. In the result,

(i) C.M.A(MD)No.238 of 2019 is allowed and it is open to the claimants/petitioners to make a claim of award amount from the owner of the vehicle. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) Cross Objection (MD)No.40 of 2021 is partly allowed. No costs.

(iii) The quantum of compensation awarded by the Tribunal is enhanced Rs.6,68,950/- to Rs.12,64,000/- which shall carry interest at the rate of 7.5% per annum.

(iv) The appellants/claimants are directed to pay the Court fee for the enhanced compensation amount, if any and the Registry is directed to draft the decree only after the receipt of the Court fee.

(v) In view of the judgment passed in C.M.A(MD).No.238 of 2019, the Insurance Company is not liable to pay the compensation to the claimants and hence, the appellant/Insurance Company is alone exonerated. It is open to the claimants to make a claim from the owner of the vehicle for the award amount.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

tta

Encl: Memo of Additional Court fee for Rs.5580/- vide SR.13073 dated 29/04/2022

To

1.Principal District Judge,
Motor Accident Claims Tribunal,
Dindigul.

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

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-19287[F] dated 19/04/2022)

C.M.A(MD)No.938 of 2019
and
Cross Objection(MD).No.40 of 2021
13.04.2022

MGJ(02.06.2022) 6P 5C