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C.M.A.No.3749 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3749 of 2012
and MP.No.01 of 2012

The National Insurance Co. Ltd.,
Rep. by its Divisional Manager,
Divisional Office,
Erode Post, Erode Taluk & District.

...Appellant

Vs.

1. Sivajothi

2. Shanmugasundharam

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 17.02.2012 made in MCOP.No.70 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Dharmapuri.

For Appellant : Mrs.R.Sreevidhya

For Respondents : No Appearance. for R1 & R2



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JUDGEMENT

Aggrieved by the Judgement and Decree dated 17.02.2012 made in MCOP.No.70 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Dharmapuri, the insurance company has come up with this Appeal.

2. The case of the appellant is that, the 1st respondent/father of the deceased filed a claim petition claiming a compensation of Rs.6,80,000/- on the ground that, on 21.04.2009, when the deceased Krishnan was driving the Lorry bearing Regn.No.TN-33-Z-2136, owned by the 2nd respondent, insured with the appellant/insurance company on the extreme left side of the road in a slow and cautious manner, suddenly the deceased lost control and thereby, the said Lorry was capsized, as a result of which, the deceased sustained fatal injuries all over the body and died on spot. After contest, the Tribunal, vide impugned judgment awarded a compensation of Rs.3,08,333/- Aggrieved by the said order, the appellant has preferred this Appeal.

3. Learned counsel for the Appellant submitted that the only



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ground on which the present appeal has been filed is that as per the terms and conditions of the policy taken by the 2nd respondent/owner of the vehicle, the 1st respondent/claimant is entitled for compensation only to the tune of Rs.2,00,000/-, however, the Tribunal has awarded a sum of Rs.3,08,333/- which is highly excessive. Therefore, the compensation awarded by the Tribunal requires reconsideration by this Court. Accordingly, he prayed for allowing this Appeal.

4. Though notice was served on the respondents and their names were printed in the cause list, none appeared on behalf of the respondents today. However, considering the long pendency of the appeal, this Court is inclined to dispose of the same based on the materials available on record.

5. The issue that arises for consideration in the present appeal is whether, the deceased/driver of the vehicle is entitled to receive the compensation awarded by the Tribunal?

6. A similar issue has already been dealt with by this Court



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wherein, it is held that when the owner is covered by the personal accidental cover, the person is entitled for compensation of Rs.1,00,000/- if it is a two wheeler and for a sum of Rs.2,00,000/- if it is a four wheeler. The similar issue was considered by the Hon'ble Apex Court in case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** In the said decision, the Hon'ble Apex Court held that the deceased, though not the owner of the vehicle, however, the deceased being the driver, steps into the shoes of the owner of the vehicle, is entitled for compensation only to the tune of Rs.2,00,000/-.

7. In view of the aforesaid decision, the present appeal is partly allowed to the aforesaid extent and it is observed and held that the 1st respondent/claimant shall be entitled only to a sum of Rs.2,00,000/-. The appellant/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.70 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already



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deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the amount awarded by this Court above, deposited by the appellant, the appellant is at liberty to withdraw the same by making appropriate application before the Tribunal. There shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

04.10.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal (Principal District Judge),
Dharmapuri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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