



C.M.A.No.2169 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2169 of 2016

United India Insurance Company Ltd.,
Silling Buildings, No.134, 4th Floor,
Greens Road, Chennai – 600 006.

... Appellant

Vs.

1. Sumathi
2. A.Rajakili (died)
3. Rajeswari
4. Kumar
5. Saravanan
6. Senthil

... Respondents

(RR 3 to 6 brought on record as LRs of the deceased R-2 viz A.Rajakili vide court order dated 28.04.2021 in C.M.P.No.11809 of 2018 in C.M.A.No.2169 of 2016)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 7th March, 2015 passed in M.C.O.P.No.5762 of 2012 on the file of the Motor accidents Claims Tribunal (VI Court of Small Causes) Chennai.

For Appellant : Ms.G.Udaya Sankar

For Respondents : Mr.K.Varadha Kumar
R1
No Appearance for R3
to R6 (Lrs of R2)



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JUDGEMENT

This appeal has been filed to set aside the decree and judgment dated 7th March, 2015 passed in M.C.O.P.No.5762 of 2012 on the file of the Motor accidents Claims Tribunal (VI Court of Small Causes) Chennai.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

The petitioners on 16.01.2012 at about 10:00 hrs, when the petitioners were travelling in a TATA Sumo car bearing registration No.TN 25 Y 5757 proceeding at Sriperumbudur to Tambaram Road, near Navalur Village, Kanchipuram District, at that time, the driver of the vehicle drove the vehicle in a rash and negligent manner due to which the vehicle capsized in a big ditch resulting in the petitioners sustaining grievous injuries and the son of the second petitioner died on the spot. Claiming compensation the petitioners have filed the claim petition.



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3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 to P.W.3 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the respondents, neither any witnesses were examined nor any documents were marked. After adjudication, the Tribunal had allowed the petition in M.C.O.P.No.5762 of 2012 awarded a sum of Rs.7,25,000/- as compensation by fastening the entire liability as against the appellant /insurance company. Aggrieved by the same, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant submitted that, the vehicle was covered under Act only policy. Therefore, the persons travelling in the car will not fall within the ambit of third party. Therefore, the insurance company would not be liable to pay any compensation to the said documents. If at all any compensation is to be paid it will be only a sum of Rs.1,00,000/- which could be paid under personal accident risk which would be without interest and cost. However, without appreciating the same the Tribunal has awarded compensation which is liable to be interfered with. Hence, he prayed to allow this appeal. He further submits that the insurance company is ready



to pay a sum of Rs.1,00,000/- in favour of the first respondent.

5. Per contra the learned counsel appearing for the first respondent / claimant submitted that though the appeal filed by the insurance company before this Court in C.M.A.No.2167 of 2016 as against one of the claimant in the claim petition was dismissed vide order dated 18.10.2016, once the connected appeal was dismissed by this Court, the same has to be necessarily followed and accordingly, he prayed for dismissal of the appeal.

6. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

7. In view of the fair submission made by the learned counsel appearing for the appellant and considering the fact that the vehicle was insured with the Act Only Policy which does not cover risk towards third party towards accident cover, maximum sum of Rs.1,00,000/- is possible. Hence, the award passed by the Tribunal is not sustainable.



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8. In the result, the appeal is allowed by modifying the compensation awarded by the Tribunal from Rs.7,25,000/- to Rs.1,00,000/-, payable to the first respondent / claimant with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, within a period of four (4) weeks from the date of receipt of a copy of this order. In view of the deposit of compensation made by the appellant, the Tribunal is directed to transfer the amount awarded by this Court along with interests and costs directly to the bank account of the first respondent through RTGS as per apportionment of the Tribunal, within a period of two (2) weeks thereafter. However, liberty is granted to the claimant to work out his remedy as against the owner of the vehicle. No costs.

17.11.2023

Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal I Addl (Sub Court), Salem

2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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