



WEB COPY



C.M.A.No.681 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.681 of 2021
and C.M.P.No.4140 of 2021

M/s.IFFCO-TOKIO General Insurance Company Limited,
Branch Office,
'TULSI CHAMBERS' III Floor,
No.195, T.V. SAMY Road,
R.S. Puram,
Coimbatore.

... Appellant

Vs.

Kalaivani (Died)

1.Minor. Harith

2.Minor. Shivani

[both minors represented by their next friend
and guardian Grandmother – Saraswathy]

3.Saraswathy

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 17th August, 2018, passed in M.C.O.P.No.845 of 2010 by the Motor Accidents Claims Tribunal, (In the Court of Sub Judge), at Sangagiri.

For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.S.Arthanadeesvaran [R1 to R3]



C.M.A.No.681 of 2021

JUDGEMENT

WEB COPY Aggrieved by the decree and judgment passed by the Motor Accidents Claims Tribunal, (In the Court of Sub Judge), at Sangagiri in M.C.O.P.No.845 of 2010, dated 17.08.2018, the insurance company has filed the present appeal.

2. It is the case of the claimants that, on 25.01.2010, the deceased who was owner cum driver of the motorcycle bearing Regn.No.TN-34-H-6520 proceeded in the same in the Tiruchengode – Salem road. On that day, at about 12.10 hours, one person all of a sudden started to cross the road and on seeing this, in order to avoid hitting the person, the deceased applied braked and as a result of which, the vehicle dashed against the Tamarind tree, due to which, the deceased sustained grievous injuries and he was taken to Tiruchengode Krishna Hospital for treatment. Inspite of the treatment given, the deceased succumbed to the injuries. For the loss sustained due to the death of the deceased, the legal heirs of the deceased filed claim petition claiming a sum of Rs.10,00,000/- before the Tribunal.

3. Before the Tribunal, the claimants have examined three witnesses viz., P.W.1 to P.W.3 and marked 11 documents viz., Ex.P.1 to Ex.P.11. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 1



C.M.A.No.681 of 2021

document viz., Ex.R.1. After adjudication, the Tribunal allowed the petition in part by awarding a sum of Rs.5,00,000/- as compensation in favour of the claimants. Aggrieved by the same, the insurance company has filed the present appeal.

4. The learned counsel for the appellant submitted that, as per policy, owner-cum-driver is entitled to the maximum personal accident cover upto Rs.2,00,000/-. In the present case, contrary to policy condition, the Tribunal has awarded a sum of Rs.5,00,000/- which is wholly unsustainable, which requires to be interfered with by this Court. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing for the respondents 1 to 3 submitted that, by considering all the materials available on record, the Tribunal has awarded compensation, which is just and reasonable, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.



C.M.A.No.681 of 2021

WEB COPY

7. There is no disputed about the fact that the policy is an Act only Policy and in the said policy, the personal accident cover for the owner of the vehicle is fixed at Rs.2,00,000/-. The owner of the vehicle, viz., the deceased, had driven the vehicle and had met with the accident and, therefore, the appellant would be liable only to pay a sum of Rs.2,00,000/- towards the personal accident claim as per the policy condition and only to the said amount, the claimants are entitled to. The compensation awarded by the Tribunal at Rs.5,00,000/-, is in violation of the policy condition and, therefore, the same is liable to be set aside.

8. When the claim petition was filed in the year 2010, the respondents 1 and 2 were aged about 8 and 4 years. Now, they should be aged about 24 and 18 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the respondents 1 and 2 as major and discharges their grandmother/Saraswathi from the guardianship. The Registry shall carry out the necessary amendments.

9. Accordingly, the Civil Miscellaneous Appeal is allowed and the award



C.M.A.No.681 of 2021

of the Tribunal is modified, reducing the compensation amount from

Rs.5,00,000/- to Rs.2,00,000/-. The appellant/insurance company is directed to deposit the said compensation to the credit of M.C.O.P.No.854 of 2010 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 deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made by the appellant/insurance company, the Tribunal is directed to transfer the award amount directly to the bank account of respondents 1 and 2 in equal share, through RTGS, within a period of two (2) weeks thereafter. Insofar as the balance amount, if any, deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

21.12.2023

Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No

sp



WEB COPY



C.M.A.No.681 of 2021

M.DHANDAPANI, J.,

sp

To

- 1.The Motor Accidents Claims Tribunal, (In the Court of Sub Judge), at Sangagiri.
- 2.The Section Officer, V.R. Section, High Court, Madras.

C.M.A.No.681 of 2021

21.12.2023