



C.M.A.No.1002 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1002 of 2017

1. S.Malarvizhi
2. G.Suresh
3. Miss S.Preethi,
Minor Represented by her mother and
next friend S.Malarvizhi ... Appellants / Petitioners

Vs.

1. S.Sakthivel
2. United India Insurance Company Limited,
Plot No.112, Thiruvalluvar Salai,
Thiruvannamiyur,
Chennai - 600 041. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2015 made in M.C.O.P.No.1517 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-III Judge, Small Causes Court, Chennai.



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For Appellant : Mr.Amar D.Pandiya
For Respondents : No appearance for R1 and R2

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1517 of 2009, the appellants / claimants who are the parents and sister of the deceased have come before this Court challenging the same by filing present civil miscellaneous appeal.

2. On 16.09.2008 at about 20.30 hrs, the deceased was travelling as a pillion rider in a motorcycle bearing Registration No.TN-07-R-9174 belonging to the first respondent driven by its rider in a rash and negligent manner with high speed, due to which, the motorcycle hit against the stationary Auto Rickshaw. The deceased sustained serious injuries and admitted in the hospital and died on 18.09.2008. Claiming compensation for the death of the deceased, his parents and the sister has filed M.C.O.P.No.1517 of 2009 before the Motor Accidents Claims Tribunal-cum-III Judge, Small Causes Court, Chennai claiming compensation of Rs.6,00,000/-.



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3. The Tribunal after considering the oral and documentary evidence came to a conclusion that the deceased as a pillion rider in the first respondent's vehicle and the insurance of the said vehicle is only an act policy which does not cover to the pillion rider. The same is supported by the evidence of Exs.R1 to R6. Ex.R6 is the insurance policy of the first respondent's vehicle for which only third party premium coverage with owner driver is paid. Therefore, the Tribunal after taking into consideration that the deceased was only aged about 14 years at the time of the accident and applied multiplier of 15 by considering the notional income of Rs.15,000/- per annum and accordingly, arrived at a total compensation of Rs.3,40,000/-. Not satisfied with the compensation awarded by the Tribunal, the appellants are before this Court for enhancement of compensation.

4. Though notice has been served on the respondents, none appeared on behalf of them and hence, the appeal is decided on its own merits and after hearing the arguments of the learned counsel appearing for the appellants.



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5. It is not in dispute that the deceased travelling as a pillion rider in a motorcycle bearing Registration No.TN-07-R-9174 owned by the first respondent and it was driven by its rider in a rash and negligent manner due to which it hit against the stationary Auto Rikshaw and thereby, resulting in the death of the deceased who sustained serious head injuries. Before the Tribunal, the Insurance Company filed a counter stating that the the rider and the first respondent who was the owner of the vehicle was not possessed the valid and effective driving licence on the date of the accident and that the burden of proving the valid driving licence and the insurance policy is on the claimants. The Insurance Company submitted that the policy issued against the first respondent's vehicle is an act policy and it does not cover the pillion rider and therefore, it is against the policy conditions. The Insurance Company also resisted the claim stating that the premium paid for the insured vehicle for only towards owner / driver and not to the pillion rider. Therefore, the claim petition ought to be dismissed by the Tribunal.



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6. This Court after considering the facts and circumstances and the submissions made on behalf of the learned counsel for the claimants, is of the view that, admittedly the deceased was aged about 14 at the time of the accident and that the accident occurred due to the rash and negligent driving of the rider of the first respondent's vehicle who dashed against the stationary Auto Rickshaw and causing severe head injuries to the deceased. That apart, the insurance policy issued to the first respondent - owner of the motorcycle bearing Registration No.TN-07-R-9174 is an act policy and it does not have a pillion rider coverage. The Tribunal after taking into account the materials placed before it, particularly Exs.R1 to R6 came to the conclusion that the policy of the first respondent's vehicle was only an act policy where the premium was paid only for the owner / driver and it does not cover the pillion rider. Further the Tribunal took into consideration the age of the deceased as 14 years and thereby, awarded a notional income of Rs.15,000/- per annum by applying multiplier of 15, which is perfectly in order.



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7. Therefore, this Court is of the considered view that since the policy is an act policy issued by the Insurance Company to the insurer which does not cover the pillion rider and that the premium was paid only to the owner / driver. The Tribunal was right in coming to the conclusion that the policy does not cover to pay compensation to the deceased, i.e., pillion rider by the Insurance Company. However, considering the age and future prospects of the deceased, the Tribunal has awarded a sum of Rs.3,40,000/- as compensation to the claimants which in the opinion of this Court is justified.

8. Finding no reasons for enhancing the award, this Civil Miscellaneous Appeal stands dismissed. No costs.

12.10.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal - III,
Small Causes Court,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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