



C.M.A.No.2064 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM :

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

C.M.A.No.2064 of 2017

M/s.Oriental Insurance Company Limited,
The Divisional Office,
A.A.Complex, First Floor,
No.159, Kumaran Road,
Tiruppur – 641 601.

... Appellant/2nd Respondent

Vs.

1.Dhanam

2.R.Vinothkumar

3.R.Mohanapriya

(Respondents 2 & 3 are suo-motu declared as Major and their mother R-1 Dhanam is discharged from Guardianship of Respondents 2 & 3 vide order dated 17.10.2023 made in C.M.A.No.2064 of 2017)

... Respondents 1 to 3 /Petitioners

4.Manjunathan

... 4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1078 of 2013 dated 10.06.2016 on the file of the Motor Accidents Claims Tribunal, II Additional District & Sessions Court, Tiruppur.



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C.M.A.No.2064 of 2017

For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates
For Respondents : Mr.Ma.Pa.Thangavel [R1 to R3]
No appearance [R4]

JUDGEMENT

Questioning the liability fixed by the Motor Accidents Claims Tribunal, II Additional District & Sessions Court, Tiruppur, in M.C.O.P.No.1078 of 2013 dated 10.06.2016, the appellant has preferred the present appeal.

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

On 10.05.2013 at about 10.30 hrs, while the deceased Kamaraj was travelling in a two-wheeler bearing Reg.No.TN-42-D-8775 on the East to West direction at Tiruppur to Kankeyam road near PEM Excellence School, he dashed against unknown two-wheeler, as a result of which, he fell down and sustained grievous head injuries and admitted at Government Hospital, Tiruppur and thereafter, referred to CMC Hospital, Coimbatore. Inspite of the treatment given by the duty doctors,



C.M.A.No.2064 of 2017

the deceased breathed his last on 11.05.2013. Thereafter, the petitioners filed a claim petition claiming a sum of Rs.11,31,000/-, which was restricted to a sum of Rs.10,00,000/-, for the death of the deceased, in M.C.O.P.No.1078 of 2013.

3. Before the Tribunal, the claimants examined four witnesses viz., P.W.1 to P.W.4 and marked 9 documents viz., Ex.P.1 to Ex.P.9. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2. After adjudication, the Tribunal had allowed the petition in part and awarded a sum of Rs.6,48,000/- 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 deceased is not the owner of the vehicle and as per FIR, an unknown vehicle dashed against the vehicle which was driven by the deceased, thereby the deceased lost his life. He also submitted that the policy is an Act only policy. As per the terms and conditions of the insurance policy



C.M.A.No.2064 of 2017

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taken by the owner of the vehicle, the owner of the vehicle is alone entitled to claim compensation in a sum of Rs.1,00,000/-. However, in the present case, the deceased is not the owner of the vehicle and the Registration Certificate of the vehicle does not stand in the name of the deceased. Without considering the said aspects, the Tribunal has awarded a sum of Rs.6,48,000/- by considering the deceased as a third party, which is wholly unsustainable and the same requires to be re-considered by this Court. Accordingly, he prays for allowing the appeal.

5. The learned counsel appearing on behalf of the respondents 1 to 3 fairly conceded that the insurance policy is an Act only policy and the deceased is the rider of the vehicle and he possessed valid driving licence, which was marked as Ex.P.9. Further, he submitted that the deceased being the rider of the vehicle steps into the shoes of the owner of the vehicle, thereby the claimants are entitled to a sum of Rs.1,00,000/- as compensation. Accordingly, he prays for appropriate orders.

6. Heard the learned counsel appearing for the appellant and the



C.M.A.No.2064 of 2017

WEB COPY

learned counsel appearing on behalf of the respondents 1 to 3 and perused the materials available on record.

7. It is seen from the records that, by order dated 20.07.2017, this Court granted an order of interim stay on condition to deposit the entire award amount by the appellant/insurance company, within a period of four weeks, pursuant to which, the appellant/insurance company has complied with the said order.

8. Further, when the claim petition was filed in the year 2013, the respondents 2 and 3 were aged about 16 and 14 years. Now, the respondents 2 and 3 should be aged about 26 and 24 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 2 and 3 as major and discharges their mother Dhanam from the guardianship. The Registry shall carry out the necessary amendments.

9. In view of the submissions made by the learned counsel



C.M.A.No.2064 of 2017

WEB COPY

appearing for the appellant and the learned counsel appearing on behalf of the respondents 1 to 3, the compensation awarded by the Tribunal by considering the deceased as a third party, is wholly erroneous and, therefore, the respondents 1 to 3/claimants are not entitled to the said compensation. However, it is to be pointed out that the deceased being the rider of the vehicle, he steps into the shoes of the owner of the vehicle and to that end, on account of personal accident insurance coverage to the owner of the vehicle under the Act Only Policy, the respondents 1 to 3/claimants are entitled to a sum of Rs.1,00,000/- as compensation. Accordingly, this Court, modifies the compensation awarded by the Tribunal, and accordingly awards compensation in a sum of Rs.1,00,000/- payable by the insurance company to the respondents 1 to 3/claimants.

10. In the result, the appeal is allowed in part by modifying the compensation awarded by the Tribunal from **Rs.6,48,000/-** to **Rs.1,00,000/-**, payable to the respondents 1 to 3/claimants with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, along with interests and costs. In view of the deposit



C.M.A.No.2064 of 2017

WEB COPY

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 respondents 1 to 3/claimants through RTGS as per apportionment of the Tribunal, within a period of two (2) weeks from the date of receipt of a copy of this order. Insofar as the balance amount deposited by the appellant/insurer, the appellant/insurer is permitted to withdraw the same by making appropriate application before the Tribunal. No costs.

17.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal,
II Additional District & Sessions Court,
Tiruppur.

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



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C.M.A.No.2064 of 2017

M.DHANDAPANI, J.,

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C.M.A.No.2064 of 2017

17.10.2023