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C.M.A.No.3478 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3478 of 2017 and

C.M.P.No.22122 of 2017

M/s.Reliance General Insurance Co.Ltd.,
Branch Office, 3rd Floor, 408,
Perundurai Road, Erode.

...Appellant

Vs.

1. P.Poongodi
2. Pachamuthu

...Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 10.03.2017 made in M.C.O.P.No.450 of 2015 on the file of the Motor Accidents Claims Tribunal III Additional District Court, Salem.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.S.Kalyanaraman for R1
Not Ready in Notice [R2]

JUDGMENT

The Civil Miscellaneous Appeal has been filed against against the award and decree dated 10.03.2017 made in M.C.O.P.No.450 of 2015 on the file of the Motor Accidents Claims Tribunal III Additional District Court, Salem.



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WEB COPY 2. It is the case of the claimant that on 24.01.2015 at about 7:30 p.m.

when the deceased Karthikeyan was riding a two wheeler bearing Registration No.TN 52 B 0113 belonging to the first respondent, at that time, a dog suddenly crossed the road, when the deceased applied sudden brake, a motor cycle which was following the vehicle driven by the deceased hit against him which resulted in the deceased in sustaining grievous injuries. Thereafter, he was taken to the hospital and after taking treatment for a period of 20 days, he died Claiming compensation in a sum of Rs.15,00,000/-, the claim petition has been filed.

3. Before the Tribunal, the claimant examined P.W.1 to P.W.3 and marked Exs.P.1 to Ex.P.11. On the side of respondents, they examined R.W.1 and marked Ex.R1. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.7,06,000/- as compensation under various heads. Aggrieved by the same, the present appeal has been filed by the appellant/ Insurance Company.



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4. Learned counsel appearing for the appellant submitted that the

above said accident happened solely due to the negligence on the part of the deceased since, at the time of accident, the deceased was under the influence of alcohol and he was not in possession of valid licence. Further, the claim made by the claimant under Section 163-A of the Motor Vehicles Act, 1988 (in short 'MV Act') itself is not maintainable, since claim petition either under Section 163-A or 166 of the MV Act can be filed only by the third parties and only in the case where the negligence aspect has to be ignored, the claim petition can be filed under Section 163-A of the MV Act. In the case on hand, the deceased having borrowed the vehicle in question from his father/2nd respondent and being the rider of the vehicle, he does not come within the ambit of third party. While so, without considering any of the said facts, the tribunal had fastened the entire liability as against the appellant, which is not sustainable. While so, without properly adjudicating any of the above said facts, the tribunal had passed the impugned award fixing the entire liability as against the appellant insurance company, which is *per se* illegal. Accordingly, he prayed for appropriate orders.



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5. Per contra, the learned counsel appearing for the first respondent / claimant submitted that the deceased borrowed the vehicle in question from his father and as he lost his control while driving, he fell down and subsequently died due to the injuries sustained by him at the time of accident and the first respondent has filed a claim petition under Section 163-A of the MV Act only for the purpose of ignoring the negligence aspect. Hence, after considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

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

7. The major issue that arises for consideration in the present appeal is whether the appellant/insurance company is liable to pay compensation for the death of the rider of the insured vehicle, though the



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said accident happened solely due to the negligence on the part of the deceased.

8. Though it is the claim of the appellant that, the deceased is not a third party and thereby the claim made by the dependents under Section 163-A of the MV Act is not maintainable, however, as the owner of the vehicle paid premium for personal accident coverage for Rs.1,00,000/-, the deceased being the son of the owner of the vehicle, is entitled to step into the shoes of the owner of the vehicle/2nd respondent and is entitled for the said amount i.e.,Rs.1,00,000/-. Hence, this Court is inclined to award the said personal accident coverage of Rs.1,00,000/- and the computation of compensation made by the Tribunal by awarding a sum of Rs.7,06,000/- is erroneous and the same requires modification.

9. Accordingly, this appeal stands partly allowed and the impugned award of the tribunal is modified, reducing the compensation amount from **Rs.7,06,000/-** to **Rs.1,00,000/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.450 of 2015



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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 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 first respondent / claimant through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Connected miscellaneous petition is closed.

31.10.2023

Speaking Order / Non Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

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To

1.The Motor Accidents Claims Tribunal, III Additional District Court, Salem.

2. The Section Officer, VR Section, Madras High Court.

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M.DHANDAPANI,J

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