



C.M.A.No.4593 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4593 of 2019
and C.M.P.No.26063 of 2019

The Manager,
Oriental Insurance Company Limited,
Motor Third Party Claim Office,
Oriental House, IInd Floor,
No.216, Prakasam Salai, Broadway,
Chennai-600 002.

... Appellant/2nd Respondent

Vs

1.S.Anitha
2.S.Sindhuja
3.S.Deepak
4.S.Reshini
5.K.Rani

6.K.Kali

... Respondents 1-6/Petitioners

7.M.Chokalingam

... 7th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree dated 28.03.2019 passed in M.C.O.P.No.331 of 2014 on the file of the Motor Accidents Claims Tribunal, Kanchipuram (Additional District Court (FTC), Kanchipuram).



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For Appellant ... Mr.R.Sivakumar

For Respondents ... Mr.C.Prabakaran for R1 to R6
... No Appearance for R7

JUDGEMENT

Aggrieved by the impugned award dated 28.03.2019 passed by the Motor Accidents Claims Tribunal, Additional District Court (FTC), Kanchipuram in M.C.O.P.No.331 of 2014, the present appeal has been filed by the Appellant/Insurance Company questioning the liability of the insurer.

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

On 06.02.2007, when the deceased late K.Sakthivel was riding the Hero Passion PRO motor cycle bearing Reg No.TN-19-W-8832 belonging to the 7th respondent, on the extreme left side of the road, suddenly the dog crossed the road, on seeing this, when the deceased tried to avoid hitting the dog, the motorcycle of the deceased capsized near a pit, as a result of which, the deceased was thrown out of the motor cycle thereby he sustained fatal injuries all over the head. Immediately after the said accident, the deceased



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was taken to the Government Hospital, Madurantakam. Due to grievous injuries suffered by the deceased, he was taken to Government General Hospital, Chennai, however, during the course of medical treatment, he died on 18.06.2014. Aggrieved by the death of the deceased, the Respondents/Claimants have filed a claim petition before the Motor Accidents Claims Tribunal, Additional District Court (FTC), Kanchipuram in M.C.O.P.No.331 of 2014 claiming a compensation of Rs.10,00,000/- as compensation.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and marked Ex.P.1 to Ex.P.7. On the side of the respondents, R.W.1 was examined and no documents were marked. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.5,00,000/- to the Respondents 1 to 6 and fastened the liability against the Appellant/Insurance Company. Challenging the said order dated 28.03.2019, the Appellant/Insurance Company has filed this Appeal before this Court questioning the liability of the insurer.



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4. Learned counsel appearing for the Appellant/Insurance Company

submitted that the only ground on which the present appeal has been filed is that as per the terms and conditions of the policy taken by the 7th respondent/ the Owner of the vehicle, the claimants are entitled for compensation only to the tune of Rs.1,00,000/-, however, the Tribunal has awarded a sum of Rs.5,00,000/- which is highly excessive. Therefore, the compensation awarded by the Tribunal requires reconsideration by this Court. Accordingly, he prayed for allowing this Appeal.

5. Per contra, learned counsel appearing for the Respondents/Claimants

submitted that when the Tribunal had accepted that the accident had occurred purely due to the negligence on the part of the drive/deceased who drove the vehicle in a rash and negligent manner which was the cause for the death of the deceased, the Tribunal after considering the oral and documentary evidences, has rightly fixed the compensation which requires no interference. Accordingly, he prayed for dismissal of this Appeal.



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6. Though notice was served on Respondents 1 to 7 and their name printed in the cause list, none appeared on behalf of the respondents today. Considering the pendency of the Appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials available on record.

7. The issue that arises for consideration in the present appeal is whether, the deceased/driver of the vehicle is entitled to receive the compensation awarded by the Tribunal.

8. A similar issue has already been dealt with by this Court wherein, it is held that when the owner is covered by the personal accidental cover, the person is entitled for compensation of Rs.1,00,000/-, if it is a two wheeler and for a sum of Rs.2,00,000/- if it is a four wheeler. The similar issue was considered in case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** In the said decision, the Hon'ble Apex Court held that the deceased, though not the owner of the vehicle, however, the deceased being the driver steps into the shoes of the owner of the vehicle, is entitled for compensation only to the tune of Rs.1,00,000/-.



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9. In view of the aforesaid decision, the present appeal is partly allowed to the aforesaid extent and it is observed and held that the original claimants shall be entitled to a sum of Rs. 1,00,000/- only with interest @ 7.5 per cent per annum from the date of the claim petition till the date of realization. The appellant/insurance company is directed to deposit the amount as awarded by this Court, along with interests and costs, as awarded by the Tribunal to the credit of M.C.O.P No.1140 of 2007 within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the same to the bank account of the 1st claimant, through RTGS, within a period of two weeks thereafter. Any amount, in excess of the amount awarded by this Court above, deposited by the appellant, the appellant is at liberty to withdraw the same by making appropriate application before the Tribunal. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed

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

- 1.The Motor Accident Claims Tribunal,
Additional District Court (FTC)
Kanchipuram.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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