



C.M.A(MD)No.1434 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 02.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

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1.Mahalakshmi

2.Minor Dharanikumar

... Appellants/Petitioners

*[Minor 2nd appellant is represented by his
mother and guardian Mahalakshmi]*

Vs

1.K.Suresh

2.United Indian Insurance Company Ltd.,
II Floor, 7A, West Veli Street,
Madurai-625 001.

... Respondents/Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 16.04.2012 made in M.C.O.P.No.1254 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge cum Fast Track Court No.1), Madurai.



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For Appellants : Mr.V.Sriram
For R2 : Mr.G.Prabhu Rajadurai
For R1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.1254 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge cum Fast Track Court No.1), Madurai. The appellants are the claimants, respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 18.06.2007, at about 10 a.m., the deceased Nagaraj and two others travelled in a loaded jeep when the jeep was nearing Valpaarai, the driver drove the vehicle in a rash and negligent manner and the deceased fell down and sustained injuries. He was taken to the Government General hospital, Kanavilakku and inspite of the treatment, he died. The deceased was aged about 25 years and was working as a mason and was earning Rs.10,000/- per month. The petitioners are his dependants and they claim a compensation of Rs.9,00,000/-.



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3.The first respondent was set ex-parte. Brief substance of the counter filed by the second respondent is as follows:

The petitioner must prove the age, avocation and income of the deceased through oral and documentary evidence. The accident was not due to the rash and negligent driving of the driver of the jeep. FIR was not filed immediately. The deceased might have died due to some other physical ailments and the deceased was a drunkard and hence he died due to its consequences. The first respondent was not responsible for the accident. The second respondent is not liable to pay compensation. The manner of accident, age and income are to be proved.

4.Three witnesses were examined and eight documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs. 7,08,500/- as compensation to be paid by the first respondent.

5.Against the award, the claimants preferred this appeal for enhancement of compensation on the following grounds:

The Tribunal is wrong in fixing the liability only on the first



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respondent. The deceased was an employee of the owner of the vehicle and the insurance company is liable to pay compensation. There was no breach of policy conditions. The policy covers the occupier of the vehicle. An occupant of the car or the vehicle is entitled to be indemnified by the insurer. The Tribunal failed to consider the judgment of the Honourable Supreme Court reported in 2012 (1) TN MAC 111 and 2012(1) TN MAC 1 and also the judgment of the Hon'ble Supreme Court reported in 2009 (1) TN MAC 659.

6.On the side of the appellant it is stated that the Tribunal is wrong in exonerating the insurance company and fixed the liability only against the owner of the vehicle. The deceased travelled in the jeep as a load man. The jeep capsized. P.W.2 has deposed that the accident has happened only due to the rash and negligent driving of the jeep driver. Passenger of a vehicle can be treated as a third party. A judgment of this Court reported in **2021 (2) TN MAC 1 (DB)** in the case of **Royal Sundaram Alliance Insurance Co.Ltd., vs Grandhi Sridevi**, is cited, wherein it is held that,

“MOTOR VEHICLES ACT, 1988(59 OF 1988), Section 147- Occupant of Car – Liability of Insurer in respect of – Admittedly, deceased, an occupant of Car driven by deceased Driver who himself was a tortfeasor – Occupant of Car can be treated as a



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Third party to Insurance Policy – Insurer rightly held to be liable to pay Compensation.”

7. Another judgment of this Court made in CMA.No.1603 of 2001 dated 30.10.2002 is cited, wherein it is held as follows:

“On this ground, instead of directing the respondents / claimants to go before the Commissioner for Workmen's Compensation Act, in order to shorten the litigation and also in the interest of justice, we decided to dispose of the appeal by determining the appropriate compensation in favour of the claimants”.

8. Another judgment of this Court reported in **2021 (2) TN MAC 15(DB)** in the case of **Royan Sundaram Alliance Insurance Co. Ltd., Vs Sangeetha**, is cited, wherein it is held as follows:

“Since the deceased was employed as Driver and accident occurred in course of employment, claimants entitled to compensation under EC Act and not under MV Act and considering age of deceased as 31 years and fixing Income at Rs.8,000/- p.m., High Court applied factor of 205.95 and awarded Total Compensation of Rs.8,23,800/- with 12% p.a. Interest under EC Act – Employees' Corporation Act, 1923.”



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9.On the side of the respondent it is stated that the policy is only an Act policy. The insurance company is not liable to pay compensation. Only the owner and the driver of the vehicle are liable to pay compensation to the claimants. Ex.R1 is the policy copy. The vehicle is a single seat mini tipper vehicle. No additional premium was paid for occupant of the vehicle.

10.On the side of the appellant it is stated that the citation mentioned by the appellants are not applicable to the facts of the present case. The type of the vehicle were not similar. In the evidence of P.W.1, it was stated that the deceased travelled as a loadman. But in the claim petition, it was mentioned that the deceased was a mason and hence Workmen Compensation Act is not applicable and the insurance company is to be exonerated from the liability.

11.A verification of Ex.R1 reveals that premium was paid only under the Workmen Compensation Act. In the claim petition and in the evidence of P.W.1, it was stated that the deceased was working as a mason. At the time of accident, the deceased and the P.W.1 went in the jeep for purchase of firewood. The name of the employer is somebody else and not the owner of



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the vehicle. Hence, the Tribunal is correct in exonerating the insurance company. No dispute regarding the quantum was, set out in the grounds of appeal. For the above said reasons, it is decided that there is no reason sufficient enough to interfere with the orders of the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.7,08,500/- (Rupees Seven Lakhs Eight Thousand and Five Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The first respondent / owner of the vehicle is directed to deposit the entire compensation of Rs.7,08,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.1254 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge cum Fast Track Court No.1), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellants are entitled to equal share in the compensation amount. On such deposit being made by the first respondent, the first appellant / 1st claimant is permitted to withdraw her share of Rs.3,54,250/-



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(Rupees Three Lakhs Fifty Four Thousand Two hundred and Fifty only) with proportionate interest and cost.

(iv) The second appellant /claimant (minor) herein is entitled for an amount of Rs.3,54,250/- (Rupees Three Lakhs Fifty Four Thousand Two hundred and Fifty only) with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until she attain majority and the first appellant/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

02.01.2023

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal /Additional District Judge cum Fast Track Court No.1), Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-delivery Judgment made in
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