



C.M.A.(MD)No.220 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.220 of 2023
and
C.M.P.(MD)No.2444 of 2023

TATA AIG General Insurance Company Ltd.,
Thirunelveli,
Through its Branch Manager.

...Appellant/2nd Respondent

Vs.

1.Ali Pathima
2.Abbubaker Siddic

Shahul Hameed (died)
3.Jappar

...Respondents/Petitioners

[The second respondent is declared as major vide order dated 22.06.2023]

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.11.2022 passed in M.C.O.P.No.77 of 2017 on the file of the Additional Motor Accident Claims Tribunal and Additional Subordinate Court, Tenkasi.

For Appellant : Mr.V.Sakthivel
For R1 to R3 : No Appearance



C.M.A.(MD)No.220 of 2023

JUDGMENT

WEB COPY

Challenging the award passed by the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi in M.C.O.P.No.77 of 2017 dated 07.11.2022, the present appeal has been filed.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)On 26.06.2016 at about 09.00 a.m., the deceased was riding his two wheeler bearing Registration No.TN-76-C-2634 along with his friend as a pillion rider. At that time, a dog had suddenly crossed the road. Hence, the deceased applied a sudden break. As a result, he fell down and succumbed to injuries.

(ii)The first claimant is the mother and the second claimant is the brother of the deceased. The deceased was aged about 19 years and he was studying second year B.Com. He was earning a sum of Rs.3,300/- by conducting tuition at



C.M.A.(MD)No.220 of 2023

his house. Hence, the claimants have filed the claim petition seeking compensation.

(iii)The second respondent before the Tribunal took a stand that the deceased was negligent in riding his motorcycle and there is no coverage policy. Hence, they are not liable to pay the compensation and opposed the claim petition.

4.Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

5.The Tribunal taking note of the fact that there is a P.A. Coverage policy of Rs.1,00,000/-, held that the deceased is entitled to the said amount and awarded the compensation of Rs.1,00,000/- to the claimants. Challenging the same, the present appeal is filed.

6.The learned counsel for the appellant submitted that Personal Accident Coverage is given only to the owner of the vehicle. In the present case, the deceased is not the owner of the motorcycle and there is no evidence to show that



C.M.A.(MD)No.220 of 2023

the motorcycle was ridden with the consent of the owner. Under the policy condition, the policy amount has to be paid only to the owner of the vehicle, not to the person, who unauthorizedly drove the vehicle. Therefore, the compensation awarded by the Tribunal under the policy coverage is not maintainable.

7.In the light of the above submission, now the point arise for consideration in this appeal is:

(1)Whether the Tribunal was right in awarding the compensation on the basis of P.A.Coverage?

8.Though the personal accident coverage is given to the owner of the motorcycle, when the said motorcycle is given to somebody to drive and involved in an accident, normally, the person who drove the vehicle will step into the shoes of the owner. This law is well settled in the case of ***Ramkhiladi and another vs. United India Insurance Company, Ltd., and another*** [2020 (1) CTC 443]. Such being the position, though the deceased in this case is not the owner of the vehicle, the fact that he was riding the motorcycle along with his friend and met with an unfortunate accident, clearly indicates that there was a consent by the owner of the vehicle.



C.M.A.(MD)No.220 of 2023

WEB COPY

9.It is not the case of the Insurance Company that the deceased drove the vehicle without any consent or he had taken the motorcycle in some other manner or using the vehicle without the knowledge of the owner. Such being the position, when the owner of the vehicle had not raised any dispute with regard to the driving of the vehicle by the deceased and also the accident, it has to be concluded that the deceased drove the vehicle with the consent of the owner of the vehicle. Accordingly, he had stepped into the shoes of the owner. Therefore, when the contract of insurance covers personal accident coverage to pay a sum of Rs.1,00,000/-, the Insurance company cannot deny the payment as per the contract. It is not the case of the Insurance Company that he did not have valid driving license at the relevant point of time and he was driving the vehicle under the influence of alcohol or he had violated any other policy condition.

10.In such view of the matter, this Court is of the view that the award passed by the Tribunal directing the Insurance Company to pay a sum of Rs.1,00,000/- (Rupees One Lakhs only) as per the contract does not suffer from any infirmity or irregularity.



C.M.A.(MD)No.220 of 2023

11. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. However, the interest awarded by the Tribunal alone is set aside.

12. The Insurance company is directed to deposit the entire compensation as awarded by the Tribunal from the date of petition till the date of realization to the credit of M.C.O.P.No.77 of 2017, on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
ta



C.M.A.(MD)No.220 of 2023

WEB COPY

To

- 1.The Motor Accident Claims Tribunal/
Subordinate Court, Tenkasi.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.220 of 2023

N.SATHISH KUMAR, J.

ta

C.M.A.(MD)No.220 of 2023

22.06.2023