



C.M.A. (MD) No. 554 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2023

Pronounced on : 24.07.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.554 of 2020

United India Insurance Company Ltd.,
Ambasamuthram.

... Appellant/
2nd Respondent

Vs.

1. Shenbagam Chettiar

2. Loga nayaki

3. Mala

... Respondents 1to3/
Claimants

4. Sudalai

... 4th Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the learned Motor Accident Claims Tribunal / Additional Sub Court, Tenkasi in M.C.O.P.No. 326 of 2014 dated 21.01.2020 and dismiss the same as against the appellant.

For Appellant : Mr.N.Dilip Kumar

For R1 to R4 : No appearance



C.M.A. (MD) No. 554 of 2020

WEB COPY

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.326 of 2014 dated 21.01.2020 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi.

2. The appellant/insurer, who was made liable to pay compensation of Rs.5,00,000/- (Rupees Five Lakhs only) with interest at 7.5% per annum to the respondents 1 to 3/claimants, who are the legal heirs of the deceased Veerapandia Raja, who died in an accident occurred on 26.04.2013, challenged the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the respondents 1 and 2/claimants 1 and 2 are the parents and the third respondent/third claimant is the sister of the deceased Veerapandia Raja.

4. It is not in dispute that the deceased Veerapandia Raja, while riding a motorcycle bearing Registration No.TN-76-K-2760 in Tenkasi –



C.M.A. (MD) No. 554 of 2020

Aaykudi road while negotiating a pit on the road, stumbled and fell down and succumbed to the injury and that the Tribunal, after considering the evidence available on record, has recorded a finding that the accident was occurred only due to the rash and negligent of the deceased Veerapandia Raja.

5. It is evident from the records that the deceased Veerapandia Raja alone has driven the vehicle belonging to the fourth respondent/first respondent and due to his driving alone, the vehicle got capsized. It is also not in dispute that the vehicle was belonging to his friend, the fourth respondent/first respondent and admittedly, the deceased Veerapandia Raja borrowed the vehicle from his friend and proceeded and as such, it can be easily inferred that the deceased Veerapandia Raja stepped into the shoes of the actual owner of the vehicle i.e., the fourth respondent/first respondent.

6. The points that arise for consideration are :

1) Whether the Tribunal erred in granting compensation of Rs.5 lakhs after holding that the deceased was responsible for the accident and that the appellant/insurer is liable to pay



WEB COPY



C.M.A. (MD) No. 554 of 2020

compensation, as per the terms of contract of insurance, despite showing that the liability was limited to Rs.1 lakh as personal accident coverage to owner/driver?

2) *Whether the impugned award is liable to be interfered with?*

7. Applying the legal dictum laid down in ***Ningamma and another Vs. United India Insurance Co. Ltd.*** reported in **2009 (13) SCC 710** followed by this Court in ***Manager, New India Assurance Company Ltd., Vs. Vinayagamoorthy and another*** reported in **2020 (2) TNMAC 753**, this Court has no hesitation to hold that the claim petition filed under Section 163A of the Motor Vehicles Act is not maintainable. Taking note of the above aspects, the learned trial Judge has rightly invoked personal accident coverage.

8. In the case on hand, Ex.P.4 is a package policy and admittedly, the premium for personal accident cover for Rs.1 lakh for owner-cum-driver of the vehicle was paid and the liability is shown as Rs.1 lakh.

9. The Hon'ble Supreme Court in ***Ramkhiladi and another Vs. United India Insurance Company and another*** reported in **(2020) 2 SCC**



C.M.A. (MD) No. 554 of 2020

WEB COPY

550 has specifically observed that as per the contract of insurance, in case of personal accident, the owner-cum-driver is entitled to the amount stipulated and that the deceased, who would be in the shoes of the owner of the vehicle, shall be entitled to the amount, as per the terms of contract of insurance. As already pointed out, in the case on hand, in Ex.P.4-package policy, personal accident coverage is given to the owner-cum-driver of the vehicle to the extent of Rs.1 lakh. But in the case on hand, the Tribunal, by relying on the judgment of this Court in ***Chinnathamani and others Vs. Amman Granties and another*** reported in **2019 (2) TNMAC 293 (DB)**, has granted Rs.5 lakhs as per Ex.P.4-policy.

10. As rightly contended by the learned counsel appearing for the appellant/insurer, in ***Chinnathamani's case***, the Hon'ble Division Bench of this Court has raised the questions as to whether the Tribunal applied the cost of living as on the date of accident as per Section 163A(3) of the Motor Vehicles Act, while determining the compensation under Section 163A; how to determine the compensation based on the Second Schedule to the Act by taking into consideration of cost of living in accordance with Section 163A(3) of the Act and as to whether the Central Government has



C.M.A. (MD) No. 554 of 2020

amended the Second Schedule in terms of Section 163A(3) of the Act and whether it is relevant to the cost of living every year since 1994 and if not, how should it be amended and what would be the appropriate income to be determined for the deceased, for determination of the compensation for the claimants, keeping in view of the cost of living and decided the above issues.

11. It is pertinent to note that there is absolutely no discussion about the personal accident coverage in the said judgment. This Court is at loss to understand as to how the Tribunal has relied on the above decision to award Rs.5 lakhs towards personal accident coverage. As already pointed out, in Ex.P.4-policy, the liability is to be to the tune of Rs.1 lakh only. Considering the above, as rightly contended by the learned counsel appearing for the appellant/insurer, the Tribunal, without any basis, has awarded Rs.5 lakhs as compensation, which is very much against the terms of contract of insurance. Hence, this Court concludes that the impugned award granting compensation of Rs.5 lakhs is liable to be interfered with and consequently, the appellant/insurer is liable to pay a sum of Rs.1 lakh with interest at 7.5% per annum, as per the terms of



C.M.A. (MD) No. 554 of 2020

WEB COPY

contract of insurance. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded at Rs.5,00,000/- (Rupees Five Lakhs only) is reduced to **Rs.1,00,000/- (Rupees One Lakh only)**. The appellant/insurer is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) with interest at 7.5% per annum from the date of petition till the date of payment to the credit of M.C.O.P.No.326 of 2014 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw a sum of **Rs.40,000/- (Rupees Forty Thousand only)** each along with accrued interest and the third respondent/third claimant is permitted to withdraw a sum of **Rs.20,000/- (Rupees Twenty Thousand only)** along with accrued interest, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be



C.M.A. (MD) No. 554 of 2020

withdrawn by the appellant/insurer. The parties are directed to bear their own costs.

WEB COPY

24.07.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/Additional Subordinate Court,
Tenkasi.



WEB COPY



C.M.A. (MD) No. 554 of 2020



WEB COPY



C.M.A. (MD)No.554 of 2020

K.MURALI SHANKAR,J.

esm

Pre-Delivery Order made in
C.M.A.(MD)No.554 of 2020

Dated : 24.07.2023