IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Civil Miscellaneous Appeal Nos.
4236 of 2019 a n d 2334 of 2023
&
C.M.P.No.22170 of 2023

C.M.A.No.4236 of 2019

1. R. Girija
2. Minor R.Narash
3. Minor R.Harish
4. N. Pachiyammal ... Appellants

Vs

1. P. Ganesh

2. The Divisional Manager
   United India Insurance Company Ltd
   Motor Third Party Claim Office
   No.66-68 Gandhi Road
   Kancheepuram. ... Respondents

a n d

C.M.A.No.2334 of 2023

The Divisional Manager
The United India Insurance Company Ltd
Motor Third Party Claim Office
No.66-68 Gandhi Road
Kancheepuram. ... Appellant

Vs

1. R. Girija
2. Minor R.Naresh
3. Minor R. Harish
   (Second and third respondents
   are rep. By their natural guardian
   and mother R.Girija

4. N. Pachaiyammal
5. P. Ganesh ... Respondents

(R.5 driver remained ex parte and notice dispensed with)

COMMON PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 4/4/2019 made in M.C.O.P.No.183 of 2013 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge, Additional District Court (Fast Track Court), Kancheepuram.

For appellant (C.M.A.No.4236 of 2019) ... Mr.C.Prabakaran

For respondents (C.M.A.No.4236 of 2019) ... No appearance for R.1

Mr.M.Krishnamoorthy for R.2.

For appellant (C.M.A.No.2334 of 2023)	...	Mr.M.Krishnamoorthy
For respondents (C.M.A.No.2334 of 2023)	...	Mr.M.Sivakumar for R.R.1 to 4

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COMMON JUDGMENT

While C.M.A.No.2334 of 2023 has been filed by the Insurance company challenging the quantum of compensation awarded by the Tribunal as excessive, C.M.A.No.4236 of 2019 has been filed by the claimants challenging the inadequate compensation awarded by the Tribunal.

2. It is the case of the claimants that deceased, aged 39 years, was doing fishing business and earning Rs.15,000/- p.m. On 16/1/2012, at about 5 a.m., while he was travelling in Mahindra Pick up Van bearing Registration No.TN-21-AJ-5938, owned by him and also owner of the goods and when the same was carried by first respondent/Ganesh, due to the rash and negligent driving of the first respondent on Maduravoil to Walajabad road, vehicle hit against left divider of roadside and accident was caused, thereby, the deceased had sustained fatal injuries and died on 24/1/2012.

3. The first claimant is the wife, second and third claimants are minor children and fourth claimant is the mother of the deceased. The legal heirs of the deceased have filed claim petition claiming a compensation of Rs.15,00,000/-.

4. Before the Tribunal, during trial, in order to prove the case, the claimants have examined P.Ws.1 and 2 and marked Exs.P1 to P.16 and on the side of the respondents, R.W.1 was examined and Exs.R.1 to R.2 have been marked. On the side of the Court, C.W.1 was examined and Ex.C.1 has been marked. The Tribunal, after considering the pleadings, oral and documentary evidence, awarded a sum of Rs.12,04,000/- under various heads.

5. The quantum of compensation awarded by the Tribunal is under challenge by the Insurance Company as well as by the claimants.

6. Heard Mr.C.Prabakaran, learned counsel for the claimants and Mr.M.Krishnamoorthy, learned counsel for the Insurance Company.

7. The learned counsel appearing for the claimants submitted that the deceased is the owner of the vehicle and he was in possession of valid driving licence with badge endorsement authorised to drive transport vehicle. The deceased was doing fishing business and was earning a sum of Rs.15,000/- p.m., but the Tribunal has fixed the monthly income of the deceased at Rs.6,000/- and awarded the compensation of Rs.11,34,000/- towards loss of dependency and hence prays to enhance the same.

8. The learned counsel appearing for the Insurance Company submitted that the primary liability in a claim petition under Motor Vehicles Act is on the owner of the vehicle and since the claimants being the legal representatives of the owner of the vehicle, they cannot maintain the claim petition by allegedly assuming the role of the owner of the goods and prays to allow C.M.A.No.2334 of 2023.

9. Upon consideration of the rival submissions, the following points arise for consideration:

(i). Whether the Tribunal was right in directing the insurer to pay compensation to the claimants?

(ii). Whether the compensation awarded by the Tribunal needs enhancement?

Point No.1:

10. The case of the insurer is that the deceased is the owner and is the insured and therefore, he is not entitled for unlimited compensation as claimed by the claimants.

11. On the other hand, it is the submission of the claimants that the limited liability of personal accident claim as mentioned in the policy would only be applicable if the owner/insured himself had caused the accident due to his negligent driving. The vehicle in question was insured by the deceased with the insurer and it was driven by the driver, resulting in the accident and, therefore, the insurer cannot escape the liability to compensate the claimants resting upon the personal accident coverage stated in the policy.

12. The learned counsel for the insurer contended that the Tribunal overlooked the legal position that the contract of insurance is only to indemnify the insured or his legal representatives against third party claims

and it does not provide coverage for the death of the insured except under personal accident for the owner cum driver only upto the amount specified in the policy.

13. The Tribunal, in its order, observed that the policy in question is a package policy which covers the liability to third parties. The said aspect is admitted. The Tribunal held that the insurer's liability cannot be restricted towards deceased as if the policy was an Act only policy and the liability of the insurer cannot be restricted to the extent of personal accident coverage limit mentioned in the policy for which the insured has paid premium. The insured having taken a comprehensive package policy is entitled for compensation and, therefore, the insurer is liable to pay compensation to the claimants.

14. Section 147(1)(b) of the Tamil Nadu Motor Vehicles Act covers the risk of third parties only and the deceased being the owner of the vehicle, he cannot be termed as a third party even though the deceased tried to take the role of owner of the goods.

15. The Tribunal has not considered the fact that the deceased being the owner of the vehicle, a person vicariously liable to pay compensation for the tort committed by his driver, his legal heirs cannot be the recipient of compensation for the same tort.

16. The law is well settled that the legal heirs of the tort feasor are not entitled to maintain claim petition under Sections 163(A) or 166 of the Motor Vehicles Act. In the present case, no other vehicle was involved in the accident and the accident occurred only due to the rash and negligent driving of the driver of the vehicle which is owned by the deceased, who travelled in the vehicle at the time of accident and claiming that he is the owner of the goods carried in the vehicle, he cannot claim compensation.

17. As rightly pointed out by the learned counsel for the insurer the primary liability under the Motor Vehicles Act for payment of compensation is that of the driver and once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation and the vicarious liability of owner is indemnified by the insurance company. Therefore, this Court is of the view that there cannot be independent liability on the insurer. The said legal position has not been considered by the Tribunal and that it

has overlooked the fact that the primary liability in a claim petition under the Motor Vehicles Act is on the owner of the vehicle. Since the claimants being the legal heirs of the owner of the vehicle, they cannot maintain the claimed petition by allegedly assuming the role of owner of the goods.

18. As could be seen from the conditions stipulated in Ex.P8 insurance policy, the policy limits the liability to the extent of Rs.2.00 lakhs for personal accident cover for owner-driver. Therefore, at best, the claimants can claim only Rs.2.00 lakhs from the insurer and Point No.1 is answered accordingly.

Point No.2

19. In view of the findings arrived at in Point No.1, the question of enhancement does not arise and Point No.2 is answered accordingly.

20. In the result, the appeal filed by the claimants is dismissed and the appeal filed by the insurance company is partly allowed by directing the insurer to pay compensation of Rs.2.00 lakhs (Rupees Two lakhs only) to

M.DHANDAPANI,J

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the claimants with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

No costs. Consequently, connected C.M.P.No.22170 of 2023 is closed.

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Index : Yes / No

Neutral Citation: Yes/No

To

The Motor Accident Claims Tribunal, District and Sessions Judge, Additional District Court (Fast Track Court), Kancheepuram.

C.M.A.No.1087 of 2019