



WEB COPY



C.M.A.No.3154 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3154 of 2024

and

C.M.P.No.25992 of 2024

V. Manohar

... Appellant

Vs.

1. A. Abdul Lathief

2. A. Narkish Begum

3. The Balaji Allianz General Insurance Co.Ltd.,
Regional Office,
New No.497 & 498, Old No.276 & 277,
Isanakattima Building 4th Floor,
Poonamallee High Road, Arumbakkam,
(Opp. to Panchali Ammam Temple &
Medical Council, Near D.G.Vaishnav College,
Chennai - 600 106.)

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated November 23, 2023 made in M.C.O.P.No.4064 of 2018 on the file of the Motor Accidents Claims Tribunal/III Small Causes Court, Chennai.



WEB COPY



C.M.A.No.3154 of 2024

For Appellant : Mr.K.Magesh
For Respondents 1 & 2 : No appearance
For Respondent No.3 : Mr.R.V.Sivaraj

JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

Aggrieved by the 'Award dated November 23, 2023 made in M.C.O.P.No.4064 of 2018' ['impugned Award' for short] by the 'Motor Accidents Claims Tribunal/III Small Causes Court, Chennai' ['Tribunal' for short], the appellant / owner of the alleged offending vehicle has filed this Civil Miscellaneous Appeal.

2. The learned Counsel for the appellant submits that the appellant is the owner of the Maruti Swift Car bearing Registration No.TN-07-BQ-4945. The accident occurred on 19.08.2017 at 3.00 p.m., due to the fault of the first and second respondent's son, who while driving the TVS Star City Motorcycle bearing Registration No.TN-32-J-6498, suddenly crossed the road in a rash and negligent manner without following the traffic rules and invited the accident. Due to the accident, the first and second respondent's son namely Irfan along with two children, Mohammed Faizal aged 4 years and Nafisa aged 8 years



C.M.A.No.3154 of 2024

sustained injuries. Later they were admitted in the hospital. Despite treatment, Irfan and Mohammed Faizal succumbed to grievous and fatal injuries sustained in the accident.

3. Learned counsel for the appellant further submits that at the time of accident, the appellant's vehicle was duly insured with the third respondent/Insurance Company and the driver of the vehicle was having a valid driving license at the time of the accident, whereas the first respondent's rider did not possess a valid driving license to drive the motorcycle. The rider of the motorcycle drove the vehicle without wearing helmet violating the traffic rules.

4. He further submits that the Tribunal, without considering the facts and circumstances and also Ex-P.14 - Policy, awarded the compensation of Rs.23,78,000/- to the claim petitioners with interest at the rate of 7.5% per annum. Further, the Tribunal inadvertently directed the Insurance Company to deposit the said amount with liberty to recover the same from the appellant who was the first respondent therein. The operative portion of the Award reads thus:-



C.M.A.No.3154 of 2024

"(1) That this petition is partly allowed and a sum of Rs.23,78,000/- (Rupees Twenty Three Lakhs Seventy Eight Thousand Only) is awarded as just compensation to the petitioner with cost and interest at the rate of 7.5 percent per annum from the date of filing of the Claim Petition i.e., 06.07.2018 till the realization, payable by the second respondent at the first instance with the liberty to recover the same from the 1st respondent without filing any separate application. Out of the total compensation the 1st and 2nd petitioners are the father and mother of the deceased are equally entitled to the compensation. No interest for the default period as per orders if any."

4.1. Being aggrieved, the appellant/owner of the vehicle has filed this Civil Miscellaneous Appeal.

5. Mr.R.V.Sivaraj, learned Counsel appearing for the Insurance Company has fairly submitted that at the time of accident, the appellant's vehicle was duly insured with the Insurance Company and the driver of the appellant possessing a valid driving license to drive the vehicle was not disputed by the Insurance Company. As per the contract of Insurance, the Insurance Company is liable to pay the Award amount and the appellant may not be fastened the liability.



C.M.A.No.3154 of 2024

6. Heard on either side and perused the materials available on record. On perusal of the Insurance Policy, it is seen that the policy was in force from 24.02.2017 to 23.02.2018. In the report of the Motor Vehicle Inspector, it is stated that the appellant's vehicle, which was involved in the accident, was duly insured with the Insurance Company and Ex-P.14 - Policy was in force on the date of the accident. Since the accident had occurred on 19.08.2017, on which date, the policy was very much in force, the insurance company is liable to pay the compensation. It is to be noted that the appellant annexed a copy of the Driving License of the 1st respondent's Driver – V.Sundaramurthy and the Motor Vehicle Inspector Report pertaining to 1st respondent's Car bearing Registration No.TN-07-BQ-4945 in the typed set of papers.

7. In view of the facts and circumstances and also the submissions made by the learned Counsel appearing on either side, this Court is inclined to allow this appeal and modify the Award by deleting the pay and recover portion alone as follows:-

"(1) That this petition is partly allowed and a sum of Rs.23,78,000/- (Rupees Twenty Three Lakhs Seventy Eight Thousand Only) is awarded



C.M.A.No.3154 of 2024

as just compensation to the petitioner with cost and interest at the rate of 7.5 percent per annum from the date of filing of the Claim Petition i.e., 06.07.2018 till the realization payable by the second respondent. Out of the total compensation, the 1st and 2nd petitioners are the father and mother of the deceased are equally entitled to the compensation. No interest for the default period as per orders if any."

8. This Civil Miscellaneous Appeal is partly allowed. The Award is modified. The order of pay and recovery is deleted in the operative portion of the Award of the Tribunal. In view of the facts and circumstances of this case, no costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.S.V., J.)

10.12.2024

asi/tk

To

The Motor Accidents Claims Tribunal /
III Small Causes Court,



Chennai.

WEB COPY



C.M.A.No.3154 of 2024



WEB COPY



C.M.A.No.3154 of 2024



WEB COPY



C.M.A.No.3154 of 2024

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

asi / tk

C.M.A.No.3154 of 2024
and C.M.P.No.25992 of 2024

10.12.2024