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C.M.A.No.265 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 29.02.2024

Delivered On: 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.265 of 2020 and
C.M.P.No.1867 of 2020

National Insurance Company Limited,
Divisional Office
Do.X, Hero Honda Vertical, 101-106
BMC House, Connaught Place,
New Delhi 110 001

...Appellant

Vs.

1.Sakthivel
2.Saravanan
3.Manikandan
4.Sakkunthala
Shankar (late)
5. Krishnan

(Respondents 1 to 3 are declared as majors
and their grandmother Sakkunthala is discharged
from guardianship of R1 to R3 vide court
order dated 29.12.2024 in CMP.No.19306/2022
in CMA.No.265 of 2020)

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and Judgment passed in M.C.O.P.No.152 of 2015 dated 21.12.2017 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Namakkal).



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For Appellant : Mr.J.Chandran

For respondents 1 to 3 : Mr.Ma.Pa.Thangavel

For respondent 4 : Died

For respondent 5 : No appearance

JUDGMENT

The Insurance Company has preferred the instant appeal challenging the quantum of compensation awarded by the Tribunal on the ground of liability and negligence.

2. The respondents 1 to 3, represented by their grandmother and the 4th respondent herein filed a claim petition in M.C.O.P.No.152 of 2015 claiming compensation for the death of the mother in the road accident on 09.09.2013. In M.C.O.P.No.152 of 2015, the petitioners 1 to 3 are the sons of the deceased Dhanam, wife of Shankar, 4th petitioner is the mother-in-law of the deceased, 2nd respondent is the owner of the vehicle and 3rd respondent is the insurer of the vehicle. In the claim petition, the manner of the accident is described as on 09.09.2013 at about 3.15pm., opposite Pramma Sakthi Mahal at Nehru Nagar in Acheruppakkam Main Road, the deceased was travelling as a pillion rider in a Hero Honda Splendor Plus Spokes Bike bearing registration No.TN 25 AA



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8664 towards her residence from Chennai, the rider/husband of the deceased drove the vehicle in a rash and negligent manner without following the traffic rules suddenly hit the center median wall, due to which, the deceased sustained multiple fractures and grievous injuries all over the body. It was claimed by the claim petitioners that the accident occurred only due to the rash and negligent driving of the rider of the bike bearing registration No. TN 25 AA 8664.

3. The appellant/Insurance company filed a counter, resisting the claim petition on the ground that the compensation claimed by the respondents 1 to 4 is excessive; that the accident did not take place due to the negligence of the rider of the two wheeler and as per the policy rules, the claim petitioners, being the legal heirs of the rider of the two wheeler, are not entitled to compensation and hence, the claim petition is liable to be dismissed.

4. Before the Tribunal, the 4th respondent herein examined herself as P.W.1 and occurrence witness was examined as P.W.2 and nine documents were marked as Ex.P1 to Ex.P9. The appellant/Insurance Company examined R.W.1 and marked Ex.R1.



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5. The Tribunal, based on the oral and documentary evidence available on record, came to the conclusion that accident has taken place due to the rash and negligent driving of the rider of the two wheeler, Shankar and appellant/Insurer is liable to pay compensation and accordingly, awarded a sum of Rs.13,40,400/-(rupees thirteen lakhs forty thousand and four hundred only).

6. The learned counsel for the appellant/Insurance Company would contend that the Insurance Company cannot be vested with the liability since the claim petitioners are the legal heirs of the deceased rider of the two wheeler.

7. Per contra, Mr.Ma.Pa.Thangavel, learned counsel for the respondents 1 to 4/ claim petitioners would contend that respondents 1 to 3 are the legal heirs of the deceased victim namely pillion rider and the policy, being the comprehensive policy, the Insurance company cannot disown the liability and is liable to pay the compensation awarded by the Tribunal. He would also contend that the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.



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8. On perusal of the oral evidence of P.W.2, the occurrence witness coupled with Ex.P1, FIR and in the absence of any contra evidence, this Court comes to the conclusion that the accident has taken place due to the rash and negligent driving of the rider of the two wheeler namely Shankar, who died due to the injuries sustained in the very same accident and on the date of the accident, the 2nd respondent before the Tribunal, being the owner of the vehicle had valid package policy issued by the appellant/Insurance company on the date of the accident.

9. Whether the claim petitioners are not entitled to compensation on the ground that the vehicle was borrowed by the rider of the two wheeler and met with an accident in which pillion rider died and whether the claim petitioners are entitled to compensation or not when the insurance policy is a package policy are no longer *res integra*.

10. In C.M.A.No.53 of 2023, this Court had an occasion to consider the very similar position and by judgment dated 06.03.2023, following the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs Balakrishnan and another*** reported in [(2013) 1 SCC



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731] held that once the policy of Insurance company is a package policy and when the pillion rider died in the accident, the legal heirs of the pillion rider are entitled to compensation and the Insurance Company is liable to pay compensation under the policy and to add more, merely because the claim petitioners are happened to be the sons of the rider of the two wheeler, the same will not debar them from making the claim under the Motor Vehicles Act, as the very same claim petitioners are the legal heirs of the deceased, the policy being the package policy, the Insurance Company is bound to honour the same. Therefore, I have no hesitation to hold that the appellant/Insurance company is liable to pay compensation to the claim petitioners.

11. On considering the compensation awarded under various heads, I find that proper multiplier has been adopted and the Tribunal had fixed the monthly notional income as Rs.6,500/- and 40 % future prospects has been awarded as the deceased was aged 35 years on the date of the accident and hence, the quantum of compensation awarded by the Tribunal appears to be just and fair. The award under the other heads is also reasonable and no interference is called for. Therefore, this Court is of the view that the award of the Tribunal is liable to be confirmed.



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12. In the result, on the point of negligence, liability and quantum of compensation, the order of the Tribunal is just and fair and the same does not require any interference in the appellate stage. I do not find any illegality or irregularity in the order passed by the Tribunal.

13. In fine,

(i) the Civil Miscellaneous Appeal is dismissed confirming the compensation awarded by the Tribunal dated 21.12.2017 made in M.C.O.P.No.152 of 2015 by the Additional District Judge, Namakkal (Motor Accident Claims Tribunal).

(ii) the appellant/Insurance company is directed to deposit the award amount before the Tribunal along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the respondents 1 to 4/claim petitioners 1 to 4 are permitted to withdraw the award amount on the basis of apportionment fixed by the Tribunal, less the amount, if any, already withdrawn, by filing necessary application before the Tribunal.



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(iv) No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To
The Motor Accidents Claims Tribunal (Additional District Judge, Namakkal).



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order made in
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04.06.2024