BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1522 of 2013
and
M.P(MD) No.2 of 2013

The Bajaj Allianz General Insurance Company Limited,
Airport Road,
G.V.Vilasa, Eravada,
Pune. ... Appellant/2nd respondent

-vs-

1. Mookkammal

Balasubramanian (Died) ... Respondents/Petitioners

2. Kumarasamy ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the decree and judgment passed in M.C.O.P.No. 243 of 2008, dated 26.08.2010 on the file of the Motor Accidents Tribunal, learned Additional Subordinate Judge, Tenkasi,

For Appellant : Mr.N.Shyllappa Kalyan

For Respondents : Mr.M.Saravanan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.243 of 2008, dated 26.08.2010 on the file of the Additional Motor Accidents Tribunal/Additional Subordinate Judge, Tenkasi, wherein, the first respondent herein has filed claim petition, claiming compensation for the death of Venkateshvaran @ Venkatesh @ Venkatesan.

2. The Tribunal has awarded a sum of Rs.3,04,000/- (Rupees Three Lakhs and Four Thousand only) along with interest at the rate of 7.5% p.a., towards compensation. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/second respondent.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

The deceased Venkateshvaran @ Venkatesh @ Venkatesan was proceeding in a two wheeler bearing Registration No.TN-76-B-4640 as a pillion rider. On 07.03.2008, at about 10.15 p.m, when the rider of the vehicle was proceeding in a rash and negligent manner and dashed against the Banyan Tree, due to which, the deceased who was travelling as a pillion rider, sustained injuries and subsequently, died in the hospital. The accident took place due to the rash and negligence on the part of the first respondent, who is the rider of the vehicle. The first respondent vehicle was insured with the second respondent and thereby, the respondents are liable to pay the compensation to the petitioners.

4. The gist of the counter filed by the second respondent is as follows:

The deceased is not a third party. The vehicle was insured only as against the third party. As per the policy, the deceased was entitled to only a sum of Rs.1,00,000/- (Rupees One Lakh only) towards compensation. The age, income and occupation of the deceased are denied as false. Therefore, the petitioners are not entitled to claim any amount in the claim petition.

5. Before the Tribunal, in order to prove the case of the petitioners, the petitioners have examined P.W.1 and P.W.2 and Exs.P.1 to P.6 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked.

6. After hearing both sides, the Tribunal has awarded a sum of Rs.3,04,000/- (Rupees Three Lakhs and Four Thousand only) along with interest at the rate of 7.5% p.a., towards compensation and directed the second respondent to pay the award amount. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/second respondent on various grounds including the liability.

7. The learned counsel appearing for the appellant would contend that the deceased is the owner of the vehicle in which he travelled as pillion rider and thereby, he cannot be treated as third party. Therefore, the insurance policy is not covered for the owner of the vehicle and he paid premium for a sum of Rs.1,00,000/- (Rupees one Lakh only) and thereby, the petitioners are entitled to the said amount, but the Tribunal without considering the same, treated as third party and awarded compensation. Therefore, the order passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the respondents would contend that the deceased was not a tort feaser, but only travelled as a pillion rider and thereby, treated as third party and awarded the compensation. The first respondent vehicle was insured with the second respondent and thereby, the second respondent is liable to pay the compensation. The Tribunal after taking all the aspects, awarded the compensation and hence, the award is just and fair compensation. Therefore, the present appeal is liable to be dismissed.

9. This Court after hearing the learned counsel appearing on either side and perusing the documents, including the order of the Tribunal, frames the following point for determination in this appeal:

(i) Whether the deceased can be treated as third party?

(ii) Whether the policy covered the owner of the vehicle?

(iii) Whether the appeal is liable to be allowed or not?

10. In this case, it is an admitted fact that the deceased is the owner of the vehicle and he was travelled as a pillion rider and met with an accident and sustained injuries and died due to the accident. According to the

appellant, the deceased being owner of the vehicle cannot be treated as third party and premium was paid for the cover of Rs.1,00,000/- (Rupees One Lakh only) towards compensation.

11. According to the respondents/claimants though the deceased is the owner of the vehicle, he only travelled as pillion rider and thereby, he cannot be treated as third party. Therefore, the Tribunal passed the award. In this case, admittedly, the deceased was the owner and he also travelled in the vehicle as pillion rider. Since the deceased was owner of the vehicle, and though he was travelled as pillion rider he cannot be treated as third party since he is the owner of the vehicle. The Insurance Company is not liable to indemnify the claim made on behalf of the owner of the vehicle and thereby, the claim made on behalf of the owner as against the Insurance is not maintainable. However, the premium was paid personal accident claim for a sum of Rs.1,00,000/- (Rupees One Lakh only) and thereby, the petitioner is only entitled to have a sum of Rs.1,00,000/- towards compensation. But the Tribunal, in the order, observed that since he travelled as pillion rider, he can be treated as third party, and the same is not acceptable and thereby, the order passed by the Tribunal is liable to be set aside. Though the petitioners are

entitled to only a sum of Rs.1,00,000/- towards compensation through the policy, already the Insurance Company deposited 50% of the amount and the same was also withdrawn by the first respondent/claimant. Considering the facts and circumstances of the case, this Court, need not pass further orders in respect of the amount already withdrawn. Therefore, the Insurance Company need not pay the remaining 50% amount as awarded by the Tribunal.

12. Therefore, this Court is of the opinion that this Civil Miscellaneous Petition is to be allowed in part and the order passed by the Tribunal is modified to the effect that the petitioners are entitled to a sum of Rs.1,00,000/- towards compensation along with interest at the rate of 7.5% p.a from the date of petition till the date of realization. Since the first respondent/petitioner received the 50% of the amount, considering the nature of the claim and the facts and circumstances of the case, the claimant need not repay the amount already withdrawn by her.

13. With the above said observation, this Civil Miscellaneous Appeal is disposed of. If any further amount is deposited by the appellant, he can withdraw the same after deducting the amount already withdrawn by the first respondent/petitioner. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

27.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal,
Additional Sub Court,
Tenkasi.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

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