



C.M.A(MD)No.1737 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.1737 of 2013

and

M.P(MD)No.2 of 2013

The Bajaj Allianz General Insurance Company Limited,
Airport Road, Eravadi,
Pune.

... Appellant/Respondent

Vs.

1.Poomani

2.Sravana Shenbagaraj

3.Minor.Kavichithra

4.Minor.Annalaxmi

5.Minor.Mutharasan

6.Kaniammal

7.Shanmugavel Nadar

... Respondents/Petitioners 1 to 7

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal, set aside the decree and



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judgment of Principal Motor Accident Claims Tribunal - Principal Subordinate Judge of Tenkasi, dated 13.06.2011 in M.C.O.P.No.94 of 2007.

For Appellant : Mr.N.Shyllappa Kalyan
for Mr.V.Sakthi

For Respondents : Mr.Lordwin Bino
for Mr.S.Shaji Bino

R-3 to R-5 : Minor represented by R-1

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.94 of 2007 on the file of the Motor Accident Claims Tribunal - Principal Subordinate Judge, Tenkasi, wherein, the respondents 1 to 7 herein have filed the petition for claiming compensation for the death of deceased Senthamil Selvan, who died in the road accident.

2. The Tribunal has awarded a sum of Rs.2,00,000/- with interest at the rate of 7.5% from the date of petition till the date of realization. As against the award passed by the Tribunal, the Insurance Company /



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appellant has preferred this Civil Miscellaneous Appeal.

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3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

4. The brief facts of the petition averments before the Tribunal are as follows:

On 24.01.2007 at about 07.15 P.M., the deceased was proceeding in the two-wheeler bearing Registration No.TN 76 A 8453 near Kuppanapuram, Sankarankovil to Tirunelveli main road at the time in order to avoid the accident from hitting against another vehicle came in opposite side he turned the vehicle. At the time, the deceased vehicle hit against the tree and he sustained injuries. Thereafter, he died on the way to hospital. He was earning a sum of Rs.15,000/- per month and he was aged about 47 years on the date of accident and the petitioners are the legal heirs of the deceased and thereby, they claiming compensation of Rs.20,00,000/-.



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5. The counter averments filed by the respondents are as follows:

The petition is not maintainable. The deceased is the owner of the vehicle and he had no license to ride the vehicle. Therefore, the respondent is not liable to pay any compensation to the petitioner. The amount claimed by the petitioner is too high.

6. Before the Tribunal, on the side of the petitioners, they have examined P.W.1 and marked Exhibits P.1 to P.9. On the side of the respondents, no witnesses were examined and not marked any documents.

7. After considering the evidences adduced by the petitioners, the Tribunal has awarded a sum of Rs.2,00,000/- towards compensation by treating the deceased as third party. As against the award passed by the Tribunal, the respondent has preferred this Civil Miscellaneous Appeal on the ground of liability.



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8. The learned Counsel appearing for the appellant / respondent would contend that the deceased was none other than the owner of the vehicle and he is not a third party, but the Tribunal erroneously came to a conclusion that since Rs.5,000/- premium was paid as third parties, the Insurance Company is liable to pay the amount by treating the deceased as third party. Therefore, the order passed by the Tribunal is liable to be set aside. Though there is a coverage of personal accident policy, the premium is paid only for the amount of Rs.1,00,000/- that too, deceased rode the vehicle without valid license, thereby, the petitioners are not entitled to any claim. Therefore, noway the appellant / respondent is liable to pay compensation to the petitioners.

9. The learned Counsel appearing for the appellant had upon relied the following judgments:

i) National Insurance Company Limited, Tirunelveli Vs. Mahalakshmi and Others in C.M.A(MD)No.740 of 2020,

ii) Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu reported in 2020 SCC Online Madras 2164.



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10. The learned Counsel appearing for the respondents / petitioners 1 to 7 would contend that the vehicle was insured with the appellant / respondent and the deceased died due to the accident and thereby, the appellant / respondent is liable to pay compensation. The Tribunal also after taking into consideration of the evidences adduced on either side, awarded only a meagre amount. The contention of the appellant / respondent that the deceased had no valid license is not acceptable because they have not taken any steps to examine the officials of second respondent to prove their contention. Even according to the personal accident coverage policy, the petitioners are entitled to a sum of Rs.1,00,000/- but the Insurance Company has not paid the said amount. Hence, the present Civil Miscellaneous Appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appellant Insurance Company is liable to pay compensation to the petitioners and the appeal has to be allowed or not?



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12. In this case, there is no dispute in respect of the involvement of the vehicle in the accident and the deceased died due to the accident and the deceased is none other than the owner of the vehicle which insured with the respondent. According to the appellant / respondent, the owner cannot be treated as a third party, but the Tribunal has awarded a compensation by treating the deceased as third party.

13. To support the contention of the learned Counsel appearing for the appellant, he relied upon the following judgments:

i) National Insurance Company Limited, Tirunelveli Vs. Mahalakshmi and Others in C.M.A(MD)No.740 of 2020,

ii) Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu reported in 2020 SCC Online Madras 2164.

14. On careful perusal of the above judgments, it is clear that the Insurance Company is not liable to pay any compensation to the owner of the vehicle, but at the same time, the learned Counsel appearing for the appellant fairly admitted that the policy is covered for personal accident coverage policy and the same is applicable to the petitioners. However, the



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petitioners have not produced the driving license of the deceased and the petitioners ought to have filed a petition before appropriate forum but not before the Motor Accident Claims Tribunal.

15. In view of the above said judgments, this Court is of the opinion that the deceased cannot be treated as third party. However, the petitioners are entitled to Rs.1,00,000/- since there is a personal accident coverage policy for Rs.1,00,000/-. The contention of the appellant / respondent is that the deceased had no valid license to drive the vehicle. In order to prove the same, the Insurance Company has not examined any witnesses to prove their contention. Once the Insurance Company taken place that the driver had no license, it is their duty to prove the same, but they have not taken any steps to examine the officials of concerned Road Transport Officer to prove their contention. Hence, the contention of the Insurance Company that the deceased has no license is not acceptable one. Therefore, as per policy of personal accident coverage, the Insurance Company is liable to pay an amount of Rs.1,00,000/-. Therefore, as discussed above, the order passed by the Tribunal in respect of awarding compensation of Rs.2,00,000/- is liable to be modified.



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16. In the result this Civil Miscellaneous Appeal stands partly allowed and the order passed by the Tribunal in M.C.O.P.No.94 of 2007 on the file of the Principal Motor Accidents Tribunal - Principal Subordinate Judge, Tenkasi is modified to the effect that the petitioners are entitled to Rs.1,00,000/- towards compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realization of the amount and the first petitioner is entitled to a sum of Rs.40,000/-. Petitioners 2 to 7 each are entitled to Rs.10,000/- towards compensation. The respondent is directed to deposit the entire amount within two months from the date of this judgment, if already any amount deposited, the award amount can be adjusted. The share of minor petitioners are ordered to be deposited into a nationalized Bank for three years or till attaining majority whichever is earlier and the Guardian for the minors is at liberty to receive interest once in three months. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

07.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Principal Motor Accident Claims
Tribunal - Principal Subordinate Judge,
Tenkasi.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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