



C.M.A.(MD).No.2016 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.2016 of 2013

and

M.P(MD) No.2 of 2013

The National Insurance Company Limited,
Kumbakonam,
Represented by its Branch Manager.

... Appellant/2nd Respondent

-VS-

- | | |
|------------------------|--|
| 1. Jothi Lakshmi | ... 1 st respondent/1 st Petitioner |
| 2. Minor Prithivirajan | ... 2 nd Respondent/ 2 nd Petitioner |
| 3. Minor Vinidha | ... 3 rd Respondent/3 rd Petitioner |
| 4. Rengarajan | ... 4 th respondent/5 th Petitioner |
| 5. Thaiyalnayagi | ... 5 th Respondent/ 6 th Petitioner |
| 6. Ramalingam | ... 6 th Respondent/1 st Respondent |

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.656 of 2007, dated 03.07.2012 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam.



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For Appellant : Mr.D.Sivaraman
For Respondents : Mr.C.Susikumar – for R1 to R5
: Mr.K.Veilmuthu -for R6

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.656 of 2007, dated 03.07.2012 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam, wherein, the respondents 1 to 5 herein have filed petition before the Tribunal claiming compensation and the Tribunal has awarded a sum of Rs.5,99,435/- (Rupees Five Lakhs Ninety Nine Thousand Four Hundred and Thirty Five only). As against the award passed by the Tribunal, the appellant/second respondent has filed this appeal on the ground of liability.

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

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



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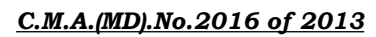
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On 31.01.2007, at about 07.30 p.m, the husband of the first petitioner, namely, Arumugam was proceeding in the first respondent's two wheeler bearing Registration No. TN-49-S-3335 near Nerkuppai main road Manniyana Bridge, at that time due to the bad condition of the road, he fell down from the motor cycle and sustained injuries and died on 03.02.2007, due to the injuries sustained out of the accident. The first respondent vehicle was insured with the second respondent. Hence, both the respondents are liable to pay compensation to the petitioners.

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

The petition is not maintainable either in law or on facts and the respondents denied the age, income and occupation of the deceased. The deceased had no valid driving license and he himself died due to his negligence and he had fell down from the vehicle. Therefore, the second respondent is in no way liable to pay compensation to the petitioners.

5. Before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and documents Exs.P.1 to Ex.P.8 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex. R.1 and Ex.R.2



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8. The learned counsel appearing for the respondents would contend that the death has arisen out of the motor vehicle accident, the first respondent vehicle was insured with the second respondent and thereby the second respondent is liable to pay compensation to the petitioners. The Tribunal also after taking into consideration of the evidences adduced on either side fairly awarded just compensation and thereby the appeal filed by the appellant is liable to be dismissed.

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

(i) Whether the tortfeasor is entitled to compensation from the Insurance Company?

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

10. In this case, there is no dispute with regard to fact that the deceased was the owner of the vehicle and the vehicle was insured with the second respondent/Insurance Company. Since the deceased himself liable for the



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accident, and he is a tortfeasor the legal heirs of the deceased cannot claim any amount and they are not entitled to compensation. However, as per the policy, premium collected for Personal Accident Coverage and thereby, the petitioners are only entitled to that amount. The Tribunal failed to consider the said aspects and the accident happened due to the negligence on the part of the deceased and a tortfeasor cannot claim any compensation. Therefore, the order passed by the Tribunal is liable to be modified. At the same time, since the policy is covered for Personal Accident Coverage for a sum of Rs.1,00,000/-, 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.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam, in M.C.O.P.No.656 of 2007, dated 03.07.2012 is hereby modified to the effect that the petitioners are entitled to the award amount of Rs.1,00,000/- (Rupees One Lakh only) with interest at the rate of 7.5% p.a from the date filing of the petition till realization of payment. The appellant/ second respondent is directed to deposit the entire award amount within a



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period of two months from the date of this order, if not already deposited. If any deposit is made by the second respondent, the petitioners are at liberty to withdraw the award amount of Rs.1,00,000/-. The first respondent/1st petitioner is entitled to a sum of Rs.30,000/- (Rupees Thirty Thousand only) with proportionate interest and costs, the respondents 2 and 3/petitioners 2 and 3 are entitled to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with proportionate interest and costs and the respondents 4 and 5/petitioners 5 and 6 are entitled to a sum of Rs.10,000/- (Rupees Ten Thousand only) each with proportionate interest and costs. In respect of the minor claimants/ respondents 2 and 3, the amount shall be deposited in a Nationalized Bank till they attain majority or 3 years whichever is earlier and the guardian of the minor claimant is permitted to withdraw the interest once in three months. The Insurance Company is at liberty to withdraw the amount, if any paid in excess. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes/No
Index : Yes / No



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Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
Additional Sub Court, Kumbakonam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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