BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.08.2024

CORAM:

THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD). Nos.158 of 2019 & 875 of 2022
and
C.M.P.(MD).Nos. 2124 of 2019 & 1957 of 2020

C.M.A.(MD).No.158 of 2019:

The Branch Manager,
New India Assurance Company Limited,
Karurvaisia Bank Building Complex,
Nehru Street,
Near Traffic Police Station,
Pondicherry. ... Appellant/Respondent

Vs.

1. Selvam
2. Alagarraja
3. Dhanalakshmi ... 1st to 3rd Respondents/Petitioners

Prayer : Civil Miscellaneous Petition filed under Section 173 of Motor Vehicle Act, praying to set aside the Judgment and Decree in M.C.O.P.No. 250 of 2015 dated 07.07.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court), Theni and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.P.Arumugam for R1

: Mr.P.Suresh for R3

C.M.A.(MD).No.875 of 2022:

S.Alagar raja ... Appellant/2nd Petitioner

Vs.

1.The Branch Manager,
New India Insurance Company Limited,
Karur Vasuy Bank Building,
Nehru Street,
Near Traffic Police Station,
Pondicherry. ... Respondent/1st Respondent

2. L.Selvam

3. P. Dhanalakshmi ... Respondents/1st & 3rd Petitioners

Prayer : Civil Miscellaneous Petition filed under Section 173 of Motor Vehicle Act, praying to allow the appeal by modifying the fair and decreetal order passed by the Hon'ble Motor Accident Claims Tribunal, Theni (Additional District Judge, FTC), in M.C.O.P.No.250 of 2015, dated 07.07.2018.

For Appellant : Mr.C.Sundaravadivel

For Respondents : Mr.J.S.Murali
(for R1)

COMMON JUDGMENT

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

The Insurance company filed this appeal in C.M.A.(MD).No.158 of 2019, challenging the liability fixed upon them in M.C.O.P.No.250 of 2015, dated 07.07.2018, by the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court), Theni.

2.The appellant S.Alagarraja filed appeal in C.M.A.(MD).No.875 of 2022, seeking enhancement the award amount fixed by the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court), Theni, in M.C.O.P.No.250 of 2015 dated 07.07.2018.

3.The two deceased namely Katturani @ Parvathi and one Santhi, who is the owner of the car Alto 800 bearing Registration No. PY 02 N 8464, the deceased's husband and a relative were travelling in the said car to attend a funeral of their relative. When the car reached the Kandamanur to K.Villaku main road at about 7.45 am, the car driven by the husband of the deceased, namely Selvam, a pickup vehicle suddenly darted from the wrong direction and hence he applied sudden brake in which, the car capsized and toppled after getting dragged to some distance on the road. Due to the accident, the deceased Santhi and another occupant of the car, namely Katturani @ Parvathi, sustained serious injuries and both of them died on the spot. One Singammal sustained grevious injuries and then the jurisdictional Police registered a case against the husband of the deceased in Crime No.201 of 2015 for the offence under Sections 279, 337 and 304(A) of IPC. The deceased Santhi is the owner of the car and her husband and children filed M.C.O.P.No.250 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court), Theni, claiming compensation of Rs.1,50,00,000/-. In the petition, it is averred that the deceased was doing business for transportation of white cement, namely Amman Cem Industries and she earned more than Rs.20,00,000/- per year and hence he claimed compensation of Rs.1,50,00,000/-.

4.The respondent insurance company filed a counter denying their liability stating that the owner died in the accident, namely insured of the vehicle and hence, they have no right to claim compensation against the insurance company. If at all they try to establish personal accident claim against the insurance company, it should be in a separate proceedings.

5.On the side of the claimants, P.W.1 to P.W.3 were examined and exhibited 43 documents as Ex.P.1 to Ex.P.43. On the side of the insurance company, R.W.1 was examined and exhibited 1 document as Ex.R.1.

6.The other claim was made by the other injured persons and the legal heirs of deceased Katturani @ Parvathi in M.C.O.P.Nos.249 of 2015 and 21 of 2016. All were clubbed together and the learned trial judge considered all the documents and allowed all the claim petitions and this claim made by the legal heirs of the deceased namely Santhi was also allowed in M.C.O.P.No.250 of 2015, by impugned order dated 07.07.2018. Challenging the same, the insurance company filed this appeal.

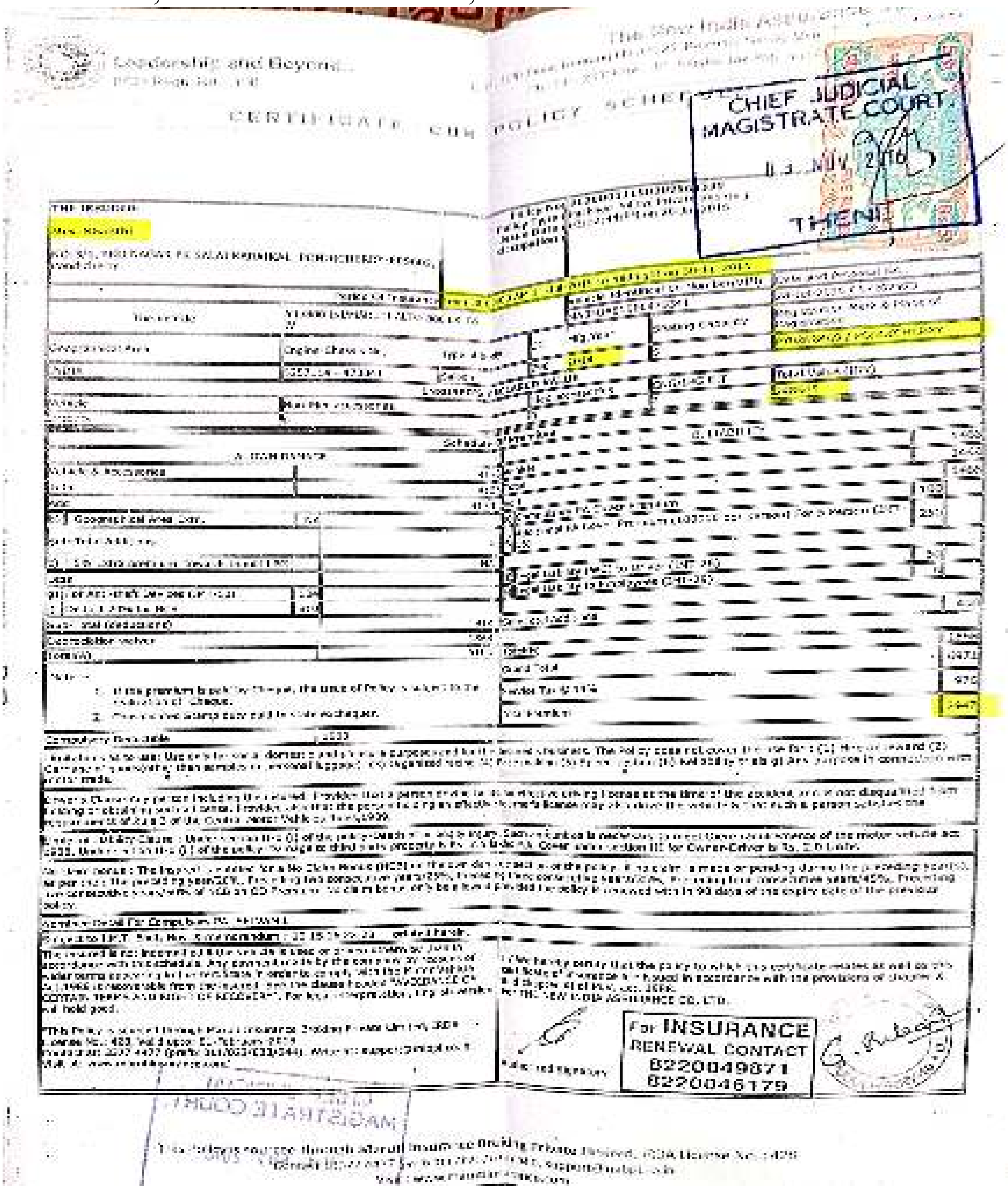
7.The learned counsel appearing for the insurance company specifically raised the plea that the insurance company is not liable to pay compensation and there was no indemnity against the insurance company for the death of the insured. The learned Tribunal Judge only on account of the comprehensive policy fixed the entire liability. Hence, he seeks for setting aside the award passed by the learned Tribunal. The learned counsel also relied the judgment of the Hon'ble Supreme Court reported in ***2012 (2) TNMAC 388,*** stating that in the case of the death of the deceased, the liability is not covered and hence, he seeks for setting aside the award against the insurance company.

8.The learned counsel appearing for the respondents/claimants submitted that the policy itself says that it is a comprehensive policy and the premium for personal accident was received as Rs.100/- and hence, the learned Trial Judge followed the law laid down by this Court reported in ***2013 (1) TNMAC 729*** and the Hon'ble Supreme Court judgment reported in ***2012(2) TNMAC 625*** granted compensation fixing the liability upon the insurance company. Hence, the award amount and the liability upon the insurance company to be confirmed.

9.This court considered the rival submission and also perused the record and also the impugned judgment and the policy.

10.Admittedly, the deceased Santhi was the owner of the Alto car bearing Registration No.PY 02 N 8469. The same was insured with the appellant/ insurance company. There was no dispute on the date of the accident. There was a valid insurance and there was a comprehensive policy. There was no dispute relating to the payment of Rs.100 for the personal accident claim. In the view of the undisputed fact, the learned Trial Judge considered the law laid down by this Court reported in ***2013(1) TNMAC 729 and 2012(2) TNMAC 625 (SC)*** and specifically found that, upon perusal of Ex.P9 Policy, an additional premium of Rs.100/- has been paid under the head of compulsory personal accident cover premium and hence the learned tribunal fixed the liability upon the insurance company. It is the contention of the insurance company under the personal coverage only Rs.1,00,000/- to be compensated. For that purpose, he did not produce any condition or the restriction clause before this Court. If the insurance company took a plea that their liability is limited to some extent, it is the duty of the insurance company to produce the entire contractual terms and establish the case.

11.In this case, except the policy, no other document was marked. Apart from Ex.P.9, it is clearly stated that there was no limitation for the payment of the compensation. For better appreciation of the fact, this Court extracts the terms of the policy and the payment of the premium under Exhibit P9, which reads as follows;



Leadership and Beyond

CERTIFICATE CUM POLICY SCHEDULE

CHIEF JUDICIAL MAGISTRATE COURT

13 NOV 2016

THENI

For INSURANCE RENEWAL CONTACT 8220049871 8220046179

THE NEW INDIA ASSURANCE CO. LTD.
1215, 12th Floor, Naurang House, 21, Kasturba Gandhi Marg, NEW DELHI-110001
Tel. : 011-23358751/011-23358750
Email: nlama.udi@gmail.com

Depreciation Cover

Policy No	31260031150302964335	Policy Type	Package Policy
Risk Inception Date	31-Jul-2015	Risk Expiry Date	30-Jul-2016
Engine No	5257114	Chassis No	473341
Registration No		Insured Name	MRS. SHANTHI
Insured Address	NO:3/1, MGJ NAGAR PK SALAI KARAIKAL PONDICHERRY 609602		

THE NEW INDIA ASSURANCE COMPANY LTD.

PRIVATE CAR ENHANCED COVER ENDORSEMENT ATTACHED TO AND FORMING PART OF POLICY NO. 31260031150302964335
Additional Premium: Rs. 2125

It is hereby declared and agreed that subject to the Insured having paid the Additional Premium as applicable the cover under Section I of the within mentioned policy is hereby extended to the effect that in the event of any partial loss claim admissible under this policy no depreciation shall be deducted for the replacements payable under the claim.

Subject to the condition that the above said coverage shall be applicable only for the first two partial loss claims admitted and payable under the policy relating to accidents during the policy period.

In case of transfer of ownership of vehicle, Zero Dep add-on cover will expire.
Only first two Claims in a Year would be considered under Zero Depreciation cover, Claims thereafter would be as per the normal Comprehensive policy of the vehicle.

Further No claim shall be payable:

1. For any extra fittings and/ or any internal improvements in the vehicle other than provided by the manufacturer originally
2. In relation to any accident occurring in any extended geographical area outside the primarily covered.
3. If the vehicle is more than three years old from the date of first purchase.

All other terms and conditions of the within mentioned policy shall remain unaltered.

This policy is sourced and serviced through :
MARUTI INSURANCE BROKING PRIVATE LIMITED
DIRECT BROKER LICENSE No. : IRDA/DB475/10, Intermediary Code : BR00000098, Mail Id: mibl@maruti.co.in, Contact No: 011-46781104.
For terms & conditions please visit www.newindia.co.in

Government of puducherry

Certificate of Registration (KARAIKAL)

Machine Readable Zone Details

18/08/2014

PY02R 8469

SELVAM

MARUTI ALTO 800 LXI ZN

SHANTHI

IV

PETROL

SALOON

MARUTI

0

790

0

FBDN1257114

17/08/2029

MARAN

Hypothecation Details

Address of the Financier

NOC Details

State To

Insurance Details

NEW INDIA INS CO

1

Cover Note / Policy No

0834200

Validity Upto

30/07/2015

Tax Payment Details

6800

NV12466

18/08/2014

Exemption(L/O/H/Y/Q)

I

Fine

0

Payment Date

18/08/2014

ATD Code

PY02

Fitness Details

Inspecting Officer

Gross Vehicle Weight(in Kgs) 0

No of Semi Trailers 0

Purpose Code NEW

Certificate is not valid unless produced along with SmartCard RC

Asst. Registering Authority

12.From the reading of the above policy, it is clear that they received Rs.100/- as personal premium without any restriction. To infer any restriction as argued by learned counsel, this court perused Ex.P.9 and Ex.R1. No limitation was found in either Ex.P.9 or Ex.P1. In view of the above factual circumstances and also law laid down by this Court reported in ***2013(1) TNMAC 729,*** this Court is unable to accept the contention of the learned Counsel for the insurance company that their liability is only to the extent of Rs.1,00,000. Apart from that, it is the settled principle that in the case of fixed liability or there was no liability at all for the insurance company, it is duty of the insurance company to prove the same. In the absence of that, the policy produced before this Court can be interpreted that the liability was not limited. Apart from that, the insurance company did not state about any clause for the limitation. They generally stated that there was no liability for them to pay for the reason that the owner died in the accident. Without any pleadings and contract term to limit the liability, this court is not in a position to accept the argument of the learned counsel for the insurance company to fix the limited liability. Apart from that the similar contention of personal accident coverage is limited to Rs.2,00,000/-

was refixed by the Hon'ble Supreme Court in the case of ***Vasuki v. Santhi*,** reported in **(2021) 16 SCC 730** at page 731

> ***4.*** *Mr Abhishek Gola, learned counsel for the insurance company pointed out that in terms of Indian motor tariff, the liability of the insurance company is limited in respect of personal accident coverage, therefore, the liability of the insurance company is limited. However, he could not point out any clause from the policy to show that the liability of the insurance company is limited. Mr Gola, learned counsel also could not point out any clause from the policy that the Indian motor tariff would be applicable in respect of the liability of personal accident coverage for the owner and driver. Mr Gola, learned counsel has referred to a judgment of this Court in Ramkhiladi v. United India Insurance Co. [Ramkhiladi v. United India Insurance Co., (2020) 2 SCC 550 : (2020) 1 SCC (Civ) 624 : (2020) 1 SCC (Cri) 514] to contend that the personal accident coverage is limited. It is argued that it was a case of motorcycle whereas the liability of the insurance company is limited to Rs 1,00,000 in respect of personal accident coverage but in respect of four-wheeler, the liability is limited to Rs 2,00,000.*
>
> ***5.*** *However, we are unable to agree with the arguments raised. The policy is categorical, indemnifying the personal accident claim of the owner and driver. There is no cap on the*

amount of compensation payable by the insurance company in the policy. There is no condition in the policy that tariff fixed by the Indian motor tariff would be applicable in respect of personal accident claim.

13.In view of the above, this Court is not inclined to interfere with the liability fixed by the learned Tribunal in M.C.O.P.No.250 of 2015. The learned counsel for the insurance company has not raised any serious objection relating to the compensation fixed by the Court below. In the said circumstances, this Court is inclined to confirm the compensation on appreciation of the facts.

14.Accordingly, the appeal C.M.A.(MD).No.158 of 2019 filed by the insurance company is dismissed.

C.M.A.(MD).No.875 of 2022:

15.The deceased was doing business for which, they produced various documents namely, income tax returns, Value Added Tax Registration Certificate and Reconstruction Deed and Licence, Partnership Deed etc. After the demise of the deceased, the said business was also discontinued. In the said circumstances, the learned Trial Judge correctly fixed yearly income of the deceased and 25% of the salary to be added for future prospects. Hence, Rs.2,21,500/- + Rs.55,375/- = Rs.2,76,875/-. After deduction of 1/3 amount from Rs.2,76,875/- towards personal expenses, the Annual income of the deceased would be Rs.1,84,585/-. The age of the deceased is 50 years and the multiplier is 13. Hence, he calculated income of deceased as Rs.23,99,605/-. After adding the consortium and other expenses, the compensation comes around Rs.24,74,605/-. One of the claimants filed the appeal before this Court challenging the apportionment of the compensation. In the said appeal, it is stated that the learned Tribunal judge had granted only Rs.3 lakhs to the said appellant. This court considered the apportionment of the amount between the claimants. The first petitioner namely the husband of the deceased is entitled to Rs. 18,74,605/- and the son of the deceased namely the appellant in C.M.A. (MD).No.875 of 2022 and the other son are entitled Rs.3,00,000/- each. This court considered the argument of learned counsel for the claimants that the sons are the legal heirs of the deceased. In the said circumstances, the award amount of Rs.3,00,000/- to the sons is not proportionate to the dependency. It is the evidence that they are also the contributed labour to the business of the deceased and also depending upon the business income of the deceased/mother.

16.Hence, this Court is inclined to enhance the amount to the appellant in C.M.A.(MD).No.875 of 2022.

17.Accordingly, the appeal C.M.A.(MD).No.875 of 2022 is partly allowed by enhancing the amount from Rs.3,00,000/- to Rs.7,00,000/- to the appellant in C.M.A.(MD).No.875 of 2022. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

[V.B.S.J] [K.K.R.K.J.]
01.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg

To

1. The Additional District Judge
   (Fast Track Court),
   Motor Accidents Claims Tribunal, Theni.

2.The Branch Manager,
   New India Insurance Company Limited,
   Karur Vasuy Bank Building,
   Nehru Street, Near Traffic Police Station, Pondicherry.

3. The Section Officer,
   VR Section (Records),
   Madurai Bench of Madras High Court, Madurai.

V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.

vsg

C.M.A.(MD). Nos.158 of 2019
& 875 of 2022
and
C.M.P.(MD).Nos. 2124 of 2019
& 1957 of 2020

01.08.2024