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CMA.(MD)No.650 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 650 of 2021

and

CMP (MD) No. 6195 of 2021

The Branch Manager,
TATA AIG General Insurance Company Limited,
Tirunelveli. : Appellant/4th Respondent

Vs.

1.Madathi : 1st Respondent/Petitioner
2.Muthukrishnan : 2nd Respondent/1st Respondent
3.Esakki
4.The Branch Manager,
Oriental Insurance Company Limited,
Tenkasi. : R3 and R4/R2 and R3

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree made in MCOP No.9 of 2019, dated 04/08/2020 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi.

For Appellant : Mr.J.S.Murali
For 1st Respondent : Mr.M.S.Sureshkumar
For R2 and R3 : No appearance
For 4th Respondent : Mr.E.Chandrasekaran



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J U D G M E N T

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This Civil Miscellaneous Appeal is filed seeking an order to set aside the judgment and decree passed in MCOP No.9 of 2019, dated 04/08/2020 by the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi.

2.The facts in brief:-

On 04/11/2014 at about 04.30 pm, the deceased Chandran was riding his two wheeler bearing registration No.TN-67-AA-9784 on the Tenkasi-Madurai Main road from south to north. When he was nearing the occurrence place, another vehicle belongs to the second respondent in the original petition was driven by its driver bearing registration No.TN-76-K-8938 in a rash and negligent manner and suddenly turned right without making any signal. As a result of which, Chandran happened to hit the vehicle, sustain grievous injuries, taken to the Government Hospital, Tirunelveli. But without responding to the treatment, he died at about 06.40 pm.

3.The deceased Chandran was a driver by profession and earning Rs.15,000/- per month. The claimant is the mother of the deceased. Claiming compensation of Rs.50,00,000/-, the petition was filed.



4.That was resisted by the 4th respondent Insurance Company by filing a counter stating that the deceased was not having driving licence at the time of the occurrence. The occurrence took place because of the rash and negligence on the part of the deceased. He hit the stationed vehicle and other customary denies were also made.

5.On the side of the claimant, 2 witnesses examined and 5 documents marked. On the side of the Insurance Company, 3 witnesses examined and 4 documents marked. Apart from that, Exs.X1 and X2 marked through the witness.

6.The Tribunal on the aspect of negligence recorded a finding that the occurrence took place because of the rash and negligence of the deceased. So, it exonerated the respondents 1 to 3.

7.Regarding the compensation amount noting that the deceased vehicle was insured with the 4th respondent, who is the appellant herein and personal accident cover was also effected, on the basis of the judgment of the Hon'ble Supreme Court as well as this court reported in New India Assurance Com. Ltd., Vellore Vs. Latha and two



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others [(2018(1)TNMAC 466 (DB)] directed the appellant to pay the personal accident cover of Rs.1,00,000/- with interest.

8.Against which, this appeal is preferred.

9.Heard both sides.

10.Only a short point arises for consideration herein.

11.The claimant namely the first respondent herein does not dispute the correctness of the finding of the Tribunal as to the finding of facts over the negligence. Since there is no cross appeal or independent appeal by the claimant, that portion of the finding requires no interference by this court.

12.Regarding the compensation, the learned counsel appearing for the appellant would submit that since the deceased himself was the tortfeasor, the claimant is not entitled for any compensation from the Insurance Company.

13.But it is now more or less well settled that in



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case of personal accident coverage, the Insurance Company can be directed to pay the amount. Here, it has been directed to pay Rs.1,00,000/- with interest @ 7.5%. It is also seen that no separate claim was filed by the claimant with the Insurance Company. But however, the Appellant Insurance Company ought to have paid the compensation amount of Rs.1,00,000/- under the personal accident coverage immediately on receipt of the intimation over the occurrence. Simply because the claimant did not prefer any claim form before the appellant Insurance company, it cannot disown its liability. Ordering of compensation amount along with interest cannot be found fault. On that account, I find no reason to interfere into the order of the tribunal.

14.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

05/06/2024

Index:Yes/No
Internet:Yes/No
er



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To,

1.The Motor Accident Claims Tribunal/
Additional Sub Court,
Tenkasi.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

er

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