



C.M.A. (MD) No. 964 of 2024

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Dated: 08.08.2024

CORAM:

THE HON'BLE MR. JUSTICE **SUNDER MOHAN**

C.M.A. (MD) No. 964 of 2024

M/s. IFFCO TOKIO General Insurance Company Ltd.,
Rep. by its Divisional Manager,
82, Preetham Plaza
Ground Floor and First Floor,
Chandrakanthi Nagar, Ponmeni,
Byepass Road,
Madurai- 625 010

..Appellant/2nd Respondent

Vs.

1. Nadhi
2. Jeevanandham
3. Minor. S. Pravanthika
4. Minor. S. Pravanth Kumar

*(Minor 3 and 4 respondents represented
through their grand mother/natural guardian,
the first respondent herein)*

5. S. Suganya

...Respondents 1 to 4/Petitioners

...5th Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment dated 09.10.2023 passed in MCOP No. 656 of 2020 on the file of the Motor Accident Claims Tribunal/Additional District Judge of Madurai by allowing this appeal.

For Appellant : Mr. V. Sakthivel

For Respondents : Mr. A. Theethar



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JUDGMENT

The appellant/Insurance company has preferred the instant appeal seeking a reduction of compensation for the legal heirs of the deceased.

2. The respondents 1 to 4 are the legal heirs of the deceased. It is the case of the respondents that on 09.01.2020, while the deceased was riding his two wheeler, an unknown bus knocked him, as a result of which, he sustained fatal injuries.

3. The second respondent filed a counter statement denying the averments made in the claim petition and submitted that the claim petition under Section 163-A of the Motor Vehicles Act is not maintainable since the deceased had stepped into the shoes of the owner and that the averments made in the petition are not true. The second respondent filed additional counter stating that the claimant would be entitled to personal accident cover for the owner and driver of the vehicle, as per policy which is a separate contract and hence, the petition before the Tribunal was not maintainable.



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4. Before the Tribunal, the claimants/petitioners have examined three witnesses on their side as P.W. 1 to P.W.3 and marked documents Exs.P.1 to P13 and the appellant/respondent has examined R.W.1 and R.W.2 and marked Exs.R1 to R4.

5. After taking into consideration the oral and documentary evidence, the Tribunal held that the claimants are the legal heirs of the deceased and hence, would be entitled to personal accident cover as per document policy/Ex.P.5, the contract between the appellant and the owner of the vehicle, who happened to be the wife of the deceased. The Tribunal also directed the appellant to pay interest at 7.5% on the compensation amount of Rs. 15,00,000/-.

6. The learned counsel appearing for the appellant submitted that the deceased who was the husband of the insured is entitled to Rs.15,00,000/- under personal accident cover and if the appellant had not adhered to the terms of contract, the claimants could have approached the Consumer Court for redressal of their grievances. However, without even approaching the appellant/company, the claimants rushed to the Tribunal and therefore, the claimants are not entitled to interest on the sum of Rs.15,00,000/-.

7. The learned counsel appearing for the respondents/



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claimants per contra submitted that the appellant could have offered to pay a sum of Rs.15,00,000/- as per condition policy at the initial stage and the very fact that they contested and delayed the proceedings would make them liable to pay the interest amount for this sum of Rs.15,00,000/-.

8.This Court has carefully considered the rival submissions.

9. The question in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

10. It is the admitted case of the respondents that the deceased was hit by an unknown bus and therefore, even according to them, the tort-feasor could not be identified. The owner of the vehicle who was the wife of the deceased had insured the vehicle with appellant herein and as per the terms of the insurance policy, which is marked as Ex.P.5 the owner is entitled to personal accident cover of Rs.15,00,000/-. Since the deceased stepped into the shoes of the owner the claimants as legal heirs of the deceased, would be entitled to the same.



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11. The claim cannot be maintained for any tortious liability.

The respondents are entitled to a sum of Rs.15,00,000/- as per the contract. As rightly contended by the learned counsel for the appellants, the respondents ought to have first approached the appellant with the necessary documents and complied with the necessary formalities for complying with the terms and conditions of policy. In the absence of the same, merely because a claim petition was filed and the appellant had filed counter to the effect that the respondents are entitled to personal accident cover, it cannot be said that the appellant delayed making payment. Such payment could not have been made pending disposal of the claim petition, because the claim petition was on the basis of tortious liability.

12. Further, this Court, under similar circumstances in CMA(MD) Nos. 220 of 2023 and 946 of 2021 directed the payment of personal accident cover without interest and has set aside the award of the Tribunal as regards the interest alone. Therefore, this Court is of the opinion that the respondents are entitled to Rs.15,00,000/- as held by the Tribunal and not to interest on the said sum.

13. In view of the same, this Civil Miscellaneous Appeal is



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partly allowed and the award of the Tribunal is confirmed and the direction with regard to the payment of interest alone is set aside.

The appellant shall deposit Rs.15,00,000/- within a period of four weeks from the date of receipt of a copy of this order, and on such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount already withdrawn, by making the necessary application before the Tribunal. No costs.

08.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/
Additional District Judge of Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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