BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.41 of 2018
and
C.M.P(MD) No.560 of 2018

The Branch Manager,
National Insurance Company Limited,
No.1754/1756, Manojiappa Street,
Thanjavur. ... Appellant/2nd Respondent

-vs-

1. Indirani
2. Suganya Ramesh
3. Nithiya
4. Ramasubramanian ... Respondents 1 to 4/ Petitioners
5. A.Jaffer Ali ... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.311 of 2016, dated 19.06.2017, on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.311 of 2016, on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur, primarily on the ground of liability.

2. It is the case of the claimants that one Kottaisamy was the owner of Maruthi 800 Car, and it was driven by the first respondent. While the said Kottaisamy was an occupant of the car, the driver of the Car had driven the vehicle in a rash and negligent manner and dashed against a Tree. Due to the said impact, Kottaisamy had sustained head injuries and later he passed away. According to the claimants, they are entitled to receive a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only).

3. The Insurance Company has filed a counter contending that the deceased himself is the insured person. Therefore, he cannot claim compensation from his own Insurance Company.

4. The Tribunal has accepted the contention of the Insurance Company that the insured person i.e., deceased being a insured person is not entitled to receive compensation from the Insurance Company. However, relying upon the Personal Accident Coverage under the policy the Tribunal has proceeded to mulct the liability upon the Insurance Company to an extent of Rs.13,53,500/- (Rupees Thirteen Lakhs Fifty Three Thousand and Five Hundred only). Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant/ Insurance Company, as per Ex.R2- Insurance Policy, the policy stands in the name of the deceased person. Whether he is a driver or occupant of the Car, the insured is not entitled to receive any compensation from his own Insurance Company. As far as the case of Personal Accident coverage is concerned, the Insurance Company has already disbursed the said amount to the family members of the deceased person. Therefore, relying upon the said insurance coverage, third party liability cannot be mulcted upon the Insurance Company. He further contended that the owner of the vehicle could never be termed as a third party to the Insurance Company. Hence, he prayed for allowing this appeal.

6. Though notices were served upon the respondents and their names printed in the cause list, they have not chosen to appear in persons or through their counsel.

7. I have carefully considered the submissions made by the learned counsel for the appellant and perused the materials available on record.

8. A perusal of Ex.R2 – Policy reveals that, it stands in the name of the deceased person, namely, Kottaisamy. The driver of the said vehicle had dashed against the Tree and in the said accident, the injured person has sustained head injuries and he passed away. Therefore, it is clear that the legal heirs of the deceased person are attempting to get compensation from their own Insurance Company, which is not permissible in law. As far as the case of personal accident coverage is concerned, since a maximum sum of Rs.2,00,000/- has been declared under the contract, this Court is not entitled to enhance the said amount. The Tribunal has erroneously relied upon the Personal Accident Coverage and mulcted the liability upon the appellant/ Insurance Company to an extent of Rs.13,53,500/-. In view of the above said facts, the award of the Tribunal is not legally sustainable and the same is liable to be set aside.

9. Accordingly, this Civil Miscellaneous Appeal stands partly allowed and the liability of the appellant is fixed at Rs.2,00,000/- (Rupees Two Lakhs only). Since the said amount is already disbursed the excess amount deposited by the appellant/Insurance Company shall be refunded to them along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

09.07.2024

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

1. The Motor Accident Claims Tribunal,
   Special District Court,
   Thanjavur.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

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