



C.M.A(MD)No.876 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **09.01.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.876 of 2021
and
C.M.P.(MD)No.8265 of 2021

The New India Assurance Company Limited,
represented through its Divisional Manager,
Office at Pillars Gate,
Opposite to Anna Stadium,
Nagercoil.

... Appellant

Vs.

1.Latha
2.Pon Sarania
3.Selva Priya

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decretal order passed by the Learned Motor Accident Claim Tribunal / Principal District Judge, Tirunelveli, in M.C.O.P.No.2084 of 2019, dated 14.07.2021,

For Appellant : Mr.N.Dilip Kumar

JUDGEMENT

The Insurance Company has filed this Civil Miscellaneous Appeal



C.M.A(MD)No.876 of 2021

against the award passed by the Tribunal.

WEB COPY

2. The claimants are the legal heirs of the deceased Mohana Sundaram. The mode of accident is that while driving the two-wheeler, the deceased has hit a sand dune, fell down and sustained grievous injuries. After first aid, he was admitted in the hospital. However, he succumbed to the injuries on 03.05.2017. The claim application was filed under Section 163 A of Motor Vehicles Act by the wife and daughters of the deceased claiming a compensation of Rs.5,00,000/-. Accepting the contention and based on the evidence, the Tribunal has awarded Rs.5,00,000/-. Aggrieved over the same, the Insurance Company has preferred this appeal.

3. The contention of the Insurance Company the accident is self-inflicted torts and there is no negligence on any third-party vehicle, it has to be considered under the driver's own negligence or personal accident claim. In such circumstances, the deceased family is entitled to compensation to the tune of Rs.1,00,000/- for which the Learned Counsel appearing for the appellant relied on the judgment rendered by the Hon'ble Supreme Court in the case of *Ramkhiladi and another Vs*



C.M.A(MD)No.876 of 2021

United India Insurance Company and another reported in (2020) 2
SCC 550 wherein it is held as under:

“9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs 1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs 1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs 5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs 5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the judgment and award was passed by the learned Tribunal in the year 2009, and the impugned judgment and order has been passed by the High Court in 10.5.2018 i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

Following the above said judgment, a Learned Single Judge of this Court
in the case of Tata AIG General Insurance Company Limited Vs.



C.M.A(MD)No.876 of 2021

Vijayalakshmi and others reported in 2020 SSC Online Mad 4480 has held as under:

“9. On perusal of the policy marked as Ex.R1, this Court finds that the insured has collected premium for personal accident of the owner/driver, with limited liability of Rs. 1,00,000/-. In this case, the deceased having entered into the shoes of the owner, entitled for compensation of Rs.1,00,000/- under personal accident coverage.”

4. In the present case, as stated supra, the deceased has hit the sand dune and it clearly comes under the owner's personal accident and therefore, the Tribunal has erred in granting Rs.5,00,000/-.

5. Therefore, this Court is allowing the Civil Miscellaneous Appeal and is fixing the liability as Rs.1,00,000/- alone. However, this Court is awarding 9% as interest to the said Rs.1,00,000/- from 01.10.2019 till the date of disbursement of the amount. At the time of admission, the Insurance Company has already deposited Rs.2,50,000/-. The claimants are entitled to interest of 9% for Rs.1,00,000/- from 01.10.2019 till the date of disbursement of the amount and the claimants



C.M.A(MD)No.876 of 2021

shall withdraw the same. The Insurance Company is permitted to withdraw the balance along with the accrued interest.

6. With the above said modification, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2024

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

Tmg



WEB COPY



C.M.A(MD)No.876 of 2021

To

1. Motor Accident Claim Tribunal /
Principal District Judge, Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.876 of 2021

S.SRIMATHY, J.

Tmg

Order made in
C.M.A(MD)No.876 of 2021



WEB COPY



C.M.A(MD)No.876 of 2021

09.01.2024