**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 11.12.2023**

**PRONOUNCED ON : 23.01.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**C.M.A.(MD)No.926 of 2019**
**and**
**C.M.P.(MD)No.12451 of 2019**

HDFC ERGO General Insurance Company Ltd.,
Rep. By its Branch Manager,
Old No.559, New No.528, II Floor,
Teynampet, Anna Salai,
Chennai. ... Appellant

Vs.

1.Manikandan
2.Priyalatha
3.Hema
4.Anandaraja ... Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 10.08.2018 made in M.C.O.P.NO.42 of 2017 on the file of the Motor Accident Claims Tribunal (CJM Court), Nagercoil.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R3 : Mr.C.K.M.Appaji
For R4 : No Appearance

**JUDGMENT**

This Civil Miscellaneous Appeal has been directed as against the award on certain counts passed by the learned Motor Accident Claims Tribunal (CJM Court), at Nagercoil, in M.C.O.P.No.42 of 2017 dated 10.08.2018 by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.42 of 2017.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a fatal case. The first petitioner is the wife of the deceased and the petitioners 2 and 3 are the daughters of the deceased. On 03.02.2016 at about 07.30 p.m., the deceased Mohandas was walking on the left side of Thingal Nagar - Thottiyodu Road from west to east direction and while he was crossing Paraseri EB office, the first respondent drove the motorcycle bearing registration No.TN-74-

AB-1753 from east – west direction without blowing horn and without noticing the person there, dashed against the said Mohandas. As the result of which, the said person sustained severe injuries. Immediately he was taken at Krishnakumar Orthopedics hospital at Parvathipuram. However, he died on the same day. Seeking compensation of Rs. 10,00,000/- for the death of their father, the petitioners have filed this claim petition.

4.The first respondent is the owner of the vehicle and the second respondent is the insurance company with which the vehicle was insured. The respondents have filed counters refuting each and every allegations set forth in the claim petition. It was pleaded that the insurance policy produced in this case is a fake policy and hence, the second respondent is an unnecessary party to the litigation and sought for dismissal of the claim petition.

5.The learned Tribunal had framed three issues. Two witnesses P.W.1 and P.W.2 were examined on the side of the petitioners and 11 documents Ex.P1 to Ex.P11 were marked and on the side of the respondents, three witnesses were examined and one document Ex.R1 was marked. On the basis of the oral and documentary evidence and arguments put forth by the respective parties, the learned Tribunal has proceeded to conclude that the accident had happened only due to rash and negligent driving of the first respondent. Though the second respondent has claimed that the insurance policy which was marked as Ex.P8 was a fake policy and hence, the second respondent is not entitled to indemnify the first respondent, the learned Tribunal proceeded to conclude that the said contention has not been duly proved by the second respondent by reliable evidence either oral and documentary evidence. That apart the first respondent had duly deposed his evidence submitting that he had valid driving licence at the time of accidents. The second respondent has to indemnify the first respondent. That apart taking note of Ex.P8, insurance policy of TN-74-AB-1753 and Ex.P7 registration certificate of TN-74-AB-1753, the learned Tribunal has observed that the first respondent has insured the vehicle bearing registration No.TN-74-AB-1753 with the second respondent insurance company through an agent K.Sethu for the period 13.07.2015 to 12.07.2016 and hence, concluded that the currency of valid insurance policy was available at the time of accident. Hence, the second respondent has to indemnify the first respondent. That apart it was also noted by the learned Tribunal that the report filed by the RTO marked as Ex.P3 would reveal that the said vehicle was insured with the second respondent.

6.On the basis of the postmortem report marked as Ex.P4, the learned Tribunal fixed the age of the deceased as 73 years. Thereafter, a notional income of Rs.3,000/- per month was fixed by the learned Tribunal. As per the law laid down in ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, 1/3rd has to be deducted towards personal expenses and 2/3rd of the income to be taken as his contribution towards his family. As per ***Sarala Verma*** case, the relevant multiplier '5' was adopted. The compensation under the head of loss of dependency was calculated as Rs.1,20,000/- (3000x12x5x2/3). The learned Tribunal has passed the award under following heads:-

| **Head** | **Compensation awarded** |
|---|---|
| (I)Loss of dependency : | Rs.1,20,000/- |
| (ii)Transportation Expenses: | Rs.15,000/- |
| (iii)Funeral Expenses: | Rs.15,000/- |

| | |
|---|---|
| (iv)Medical Expenses: | Rs.5,042/- |
| Total compensation awarded: | Rs.1,55,042/- with interest @ 7.5 % from the date of the claim until the realization and costs. |

7.Challenging the same, the appellant/second respondent insurance company has filed this Civil Miscellaneous Appeal on the ground that the learned Tribunal ought not to have directed the appellant/second respondent to indemnify the first respondent in view of the fact that the insurance policy was a fake policy.

8.However, a careful perusal of the materials available on record would reveal that the learned Tribunal has diligently examined the various evidences deposed by the witnesses and documentary evidence and had come to the conclusion that the policy was not a fake policy.

9.The second respondent/insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioners/claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The petitioners/claimants are not entitled for interest for the default period, if there is any.

10.In view of the above, I am not inclined to interfere in the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**23.01.2024**

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

To
1.The Motor Accidents Claims Tribunal,
(Sub Judge), Nagercoil.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

**L.VICTORIA GOWRI, J.**

Mrn

**C.M.A.(MD)No.926 of 2019**

**23.01.2024**