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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.924 of 2012

and

M.P.No.1 of 2012

The Branch Manager,
National Insurance Company Limited,
I Floor, Sharadhamma Building,
Byepass Road, Hosur,
Krishnagiri District.

..Appellant/2nd Respondent

..Vs..

1.R.Govindasamy
2.Ponmathi
3.P.V.Govindasamy

..Respondents/Petitioner

Prayers: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 27.10.2010 made in MACTOP. No.100 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri.

For Appellant : Mr.R.Ravichandran
For Respondents 1 & 2 : Mr.Mukund R.Pandiyan
Respondent 3 set ex parte

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the award dated 27.10.2010 passed by the Motor Accident Claims Tribunal (Additional District Judge at Krishnagiri) in MCOP.No.100 of 2009.

The brief facts leading to the filing of the instant appeal are as follows:

2. Minor Prakash aged 4 years died on 16.06.2008 as a result of an accident caused by a mini bus bearing registration No.TN41-C-2017 owned by the third respondent and insured with the Appellant. The legal representatives of the deceased minor prakash who are the respondents 1 and 2 in the instant appeal, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.100 of 2009 seeking a compensation of Rs.5,00,000/-. The



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Motor Accident Claims Tribunal by its Award dated 27.10.2010 in MCOP.No.100 of 2009 directed the Appellant to pay the respondents 1 and 2 a sum of Rs.3,75,000/- together with interest at the rate of 6% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 27.10.2010 passed in MCOP.No.100 of 2009, the instant appeal has been filed by the insurance company.

4. Heard Mr.R.Ravichandran, learned counsel for the Appellant and Mr.Mukund R.Pandiyan, learned counsel for the respondents 1 and 2. The third respondent has remained ex parte both before the Tribunal as well as this Court.

5. According to the learned counsel for the Appellant, the first and second respondents have preferred a claim only under Section 163-A of the Motor Vehicles Act and therefore, the Tribunal ought to have awarded the compensation as per the second schedule of the Motor Vehicles Act, 1988 alone. According to him, the Tribunal committed an error by awarding compensation as if it is a claim under Section 166 of the Motor vehicles Act, 1988. The learned counsel for the Appellant would further contend that the subject mini bus did not have a valid permit to operate as a school bus and therefore, the Appellant is entitled to repudiate their liability under Section 149 (a) (2) (c) of the Motor Vehicles Act, 1988 and under the terms and conditions of Ex.R1, the insurance policy.

6. Per contra, the learned counsel for the first and second respondents would submit that even though the claim was filed under Section 163-A of the Motor Vehicles Act, the Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. Further the learned counsel for the first and second respondents would contend that as per the recent notification issued by the Central Government with effect from 24.05.2018, the claim under Section 163-A of the Motor Vehicles Act, 1988 is enhanced to Rs.5,00,000/-.

7. The learned counsel for the first and second respondents also relied upon the Judgment of the Hon'ble Supreme Court in the case of Kishan Gopal & another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC) and submitted that the Hon'ble Supreme Court awarded a sum of Rs.5,00,000/- as compensation for the death of minor as a result of the accident which happened in the year 1992. In the instant case, the accident happened in the year 2008 and the Tribunal has awarded only Rs.3,75,000/- as compensation and therefore, the compensation awarded is not excessive.



8. The learned counsel for the first and second respondents further contended that under the impugned Award, the Appellant has been granted pay and recovery rights. According to the learned counsel for the first and second respondents, it is well settled that once there is a policy violation, the Appellant will have to pay the compensation amount to the claimant and thereafter recover the same from the insured(owner).

9. This Court has examined the impugned Award.

10. As rightly pointed out by the learned counsel for the first and second respondents, the Tribunal has awarded pay and recovery rights to the Appellants under the impugned Award for policy violation committed by the insured, This Court cannot exonerate the Appellant's liability to pay compensation to the first and second respondents, in view of the settled position of law as laid down by the Hon'ble Supreme Court in the case of S.Iyyapan vs. United India Insurance Company Limited and Another reported in (2013) 7 SCC 62.

11. As regards the contention of the Appellant that the claim was filed under Section 163-A and not under Section 166 of the Motor Vehicles Act 1988, the Tribunal under the impugned Award has given a clear finding based on the materials available on record as well as the oral and documentary evidence let in by the parties that only due to the rash and negligent driving by the driver of the mini bus, the accident had happened which resulted in the death of minor Prakash. The Appellant cannot raise a plea before this Court that the claim was not filed under Section 166 but filed only under Section 163-A of the Motor Vehicles Act, 1988. Section 163-A of the Motor Vehicles Act deals with no fault liability. But even though the claim was made under Section 163-A, in the instant case, under the impugned Award, the Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened, which resulted in the death of minor Prakash.

12. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly the appeal is dismissed without costs. Consequently, connected miscellaneous petition is closed.

13. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount already deposited, to the credit of MCOP.No. 100 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first and second respondents are



permitted to withdraw the amount deposited by the Appellant by filing an appropriate application as per the ratio apportioned by the Tribunal.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Krishnagiri.

2.The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr. R. Ravichandran, Advocate Sr.70620
+ 1 cc to Mr. Mukund R. Pandiyan, Advocate SR.70067

C.M.A.No.924 of 2012

SSV(CO)
EU(29/11/2018)