

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA No.109 of 2013

and

C.M.P.No.1 of 2013

ICICI Lombard General
Insurance Company LTD.
'Swarnambigai plaza'
Omalur Main Road,
Salem-9

.... Appellant/2nd Respondent

Vs

1.Viji
2.Minor-Mathura(represented by the 1st respondent)
3.Sellammal
4.K.Palaniappan

...Respondents /Petitioners 1-3/1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30-08-2011 made in M.C.O.P.No.13 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Sankagiri.

For Appellant : Mr.R.Sreevidhya

For R1 to r3 : Mr.Ma.P.Thangavel

For R4 : Ex-parte

JUDGMENT

This Civil Miscellaneous has filed by the appellant/insurance company against the award dated 30-08-2011 made in MCOP. No. 13 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Sankari.

2. Heard the learned counsel appearing for the appellant and perused the materials available on record.

3. The appellant/Insurance Company is 2nd respondent in

MCOP. No.13 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Sankari, The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one K.Govindaraju who died in the accident that took place on 26.12.2006. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving on part of the driver of the lorry and directed both the 1st respondent as well as the appellant/insurance company being insurer of the said vehicle to pay jointly and severally, a sum of Rs.8,50,000/- as compensation to the claimants/respondents 1 to 3 herein. Challenging the liability fastened on them, by award dated 30.08.2011 made in MCOP. No. 13 of 2008, the appellant/Insurance Company has come out with the present appeal.

4. The learned counsel appearing for the appellant-Insurance Company denied the fact that the deceased K. Govindaraju was a driver of the lorry bearing registration No. KA 01 AD 6077 belonging to the 1st respondent and also denied that the accident took place in the course of the employment. The learned counsel further contended that the deceased K. Govindaraju was a passenger in the above mentioned goods vehicle, whose risk is statutorily not required to be covered under the policy. Therefore there is no liability whatsoever to compensate the claimants and prayed for setting aside the award of the tribunal.

5. From the award of the tribunal, it is seen that on the side of the appellant /insurance company RW1 - legal manager of the Insurance Company was examined before the tribunal. It is observed that the appellant insurance company has not denied the accident. Further, RW1 in his cross examination has accepted that the accident had occurred while said lorry was proceeding to another state and the claimant was also employed as the additional driver in the said lorry. He had further deposed that the policy was in existence and the lorry was registered in the state of Karnataka. The policy covers two persons including driver of the vehicle and the premium was also paid and hence the said policy is completely under coverage at the time of the accident. It is also seen from the evidence of PW3 that the claimant was engaged by him in the lorry bearing Registration No.KA-01-AD-6077 as additional driver and he also paid salary to him.

6. Considering the arguments of the respondents 1 to 3/claimants that the deceased was employed under the 1st respondent as additional driver in the said lorry and they were proceeding to another state (Karnataka) at the time of the accident, which facts were very much proved from the evidence of PW3 and the policy - exhibit R1, which clearly proves that the

vehicle was insured with the policy covering the additional person and also in existence at the time of the accident, this Court comes to the conclusion that the finding of the tribunal in fixing liability on the insurance company is very much proper and the sum awarded by the tribunal by taking into consideration of the age, occupation and income of the deceased is also very much reasonable and hence does not require any interference by this Court.

7. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.8,50,000/- awarded by the Tribunal as compensation to the claimants/respondents 1 to 3 herein, along with interest and costs is confirmed. Since, it is represented that the appellant/Insurance Company has already deposited Rs.25,000/- , both the appellant/Insurance Company as well as 4th respondent are directed to deposit the balance award amount with interest and costs, jointly and severally, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the amount to the claimants bank account thro' RTGS within one week thereon as per the apportionment awarded by the tribunal. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsn/ak

To

1.The Motor Accident Claims Tribunal,
The Subordinate Judge, Sankagiri.

3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 7734

C.M.A.No.109 of 2013
and
C.M.P.No.1 of 2013

SKV(CO)
GN(27/11/2019)