

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3091 of 2018
and
C.M.P.No.23520 of 2018

M/s.SBI General Insurance Company Limited,
Fatima Akhtar Court, 4th Floor,
No.453 (Old No.312), Anna Salai,
Teynampet, Chennai-600 018. ... Appellant/2nd Respondent

Vs.

1.M.Selvi ...RR1 & 2/Petitioners
2.K.Murugan

B.Murali (Deceased)

3.M.Mahadevi
4.M.Dinesh (Minor)
5.M.Lokesh (Minor)
6.Smt. Sakuntala ... Respondents 3 to 6/Respondents 3 to 6

(Respondents 4 & 5 are Minors represented by their
Mother and Next Friend, the 3rd Respondent hererin)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.06.2018 made in M.C.O.P.No.5816 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : M/s.C.Harini for
M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 14.06.2018 made in M.C.O.P.No.5816 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

2.The appellant is 2th respondent in M.C.O.P.No.5816 of 2013, on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., M.Subash, who died in the accident that took place on 02.05.2013.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the excavator vehicle belonging to deceased B.Murali (the husband of the 3rd respondent and father of the respondents 4 and 5) and directed the appellant-Insurance company as an insurer of the vehicle to pay a sum of Rs.13,40,400/- as compensation to the respondents 1 and 2/claimants.

4.Challenging the said award dated 14.06.2018 made in M.C.O.P.No.5816 of 2013, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the seating capacity of the Hitachi 150 Excavator is only for driver and policy does not cover the alleged cleaner. The Tribunal by mis-interpretation of policy, fastened the liability on the appellant. The policy issued by the appellant is old policy and as per the new policy, the rate was amended on 29.03.2012, extra premium is Rs.50/- and the deceased B.Murali/owner of the vehicle paid only Rs.50/- to cover the driver alone. The Tribunal ought to have exonerated the appellant from its liability, as the policy does not cover the cleaner. In any event, the amount awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

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

7.According to the learned counsel appearing for the appellant, the insurance policy issued by the appellant covers only the driver and does not cover any other person and does not cover the alleged cleaner. The respondents 1 and 2 have produced Ex.P12/copy of Insurance policy and appellant has produced Ex.R1/copy of Authorization letter. The Tribunal has considered both the documents. As per Ex.P12, the owner of the vehicle has paid extra premium of Rs.50/- and Rs.120/-. As per Ex.P12, extra premium per person is only Rs.25/-. The owner of the vehicle had paid Rs.120/- to cover driver, contractor and coolie. The

contention of the learned counsel for the appellant that the amount per person was enhanced to Rs.50/- is not acceptable in the facts of the present case. R.W.1 who is the Legal Manager of the appellant has admitted that Ex.P12/copy of Insurance policy was issued by the appellant. In view of the said admission of the conditions mentioned above only, policy marked as Ex.P12 is binding on the appellant. The Tribunal considering the entire materials on record and extra premium paid by the owner and evidence of R.W.1, held that policy covers the cleaner also. There is no error in said finding of the Tribunal, warranting interference by this Court. The amounts awarded by the Tribunal under different heads are just compensation and are not excessive.

8.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.13,40,400/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw their share of the award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

+1cc to M/S.M.B.Gopalan Associates, Advocate sr.5674

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srg 08/07/2019