IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3056 of 2007
and
M.P.No.2 of 2007

(Through Video Conferencing)

The Manager
United India Insurance Co. Ltd.,
No.280, Ooty Main Road,
Mettupalayam, Coimbatore. ... Appellant/3rd Respondent

Vs.

1.Manimegalai

2.M.Vanathi (minor)
rep. by mother guardian
Manimegalai.

3.S.K.Subramani

4.S.Bhagyalakshmi .. Respondents1 to 4/ Petitioners

5.Abdul Kalam

6.A.Piju ... Respondents5 & 6/ Respondents1& 2

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 26.07.2005 made in MCOP No.844 of 2003 on the file of the Motor Accident Claims Tribunal additional District Court, (FTC - III) at Coimbatore.

For appellant : M/s.J.Malar

For R1 to R4 : Mr.Ramkumar Ritheesh for Mr.N.Selvaraju

For R5 & R6 : No appearance

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J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 26.07.2005 passed by the Motor Accidents Claims Tribunal, Coimbatore (Fast Track Court No.III, Coimbatore) in M.C.O.P.No.844 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.5,53,500/- as compensation together with interest at 9% p.a. from the date of claim petition till the date of realisation, to the 1^{st} to 4^{th} respondents/claimants who are the parents, wife and child of the deceased S.Mahendran.

3. The deceased S.Mahendran died in a motor accident. The accident is said to have been taken place on 24.12.2002 at Siirumugai to Karamadi Road, near Siruvani Textiles at about 11.45 p.m. when the deceased was travelling as a pillion rider in a TVS 50 bearing registration No. TN-40-1917. It was stated that the rider of the said TVS 50 drove it in a rash and negligent manner and caused accident, resulting in the deceased being thrown out from the TVS 50. It is stated that the deceased sustained grievous injuries and was admitted in the Hospital and died in the hospital on 04.01.2003.

4. It is submitted by the learned counsel for the appellant that the 1^{st} respondent who deposed evidence as P.W.1 had stated that she would undertake the responsibility for not getting the body of the deceased subjected to postmortem.

5. In this appeal, the appellant Insurance Company has mainly challenged the liability on the ground that the deceased was a pillion rider of the TVS 50 motorcycle bearing registration No. TN-40-1917. The said motor cycle was insured with the appellant Insurance only against 3^{rd} party risk and did not cover the risk of the owner to the pillion rider. It is submitted that the deceased was not a third party. In this connection, the learned counsel for the appellant Insurance Company places reliance on the decisions of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and Ors., (2003) 2 SCC 223 and in United India Insurance Co. Ltd., Vs. Tilak Singh And Ors., (2006) 4 SCC 404.

6. It is submitted that RW1 Branch Manager of the appellant Insurance Company has also categorically stated that the policy was an 'Act Policy' (3^{rd} party policy) and therefore even if it assumed that the accident due to the negligence of the rider of the insured TVS 50, no liability can be fastened on the appellant Insurance Company.

7. I have heard the learned counsel for the appellant. I have perused the evidence on record. After hearing the arguments of the learned counsel for the appellant Insurance Company, it is stated by Mr.Ramkumar Ritheesh representing counsel that Mr.N.Selvaraju, the learned counsel for the 1^{st} to 4^{th} respondents, is unable to appear since he has tested Covid-19 was positive to him and he was admitted in the hospital. Since no adverse orders are proposed to be passed against the 1^{st} to 4^{th} respondents in this Judgment, based on the evidence on records, I am inclined to dispose the same.

8. Though the learned counsel for the appellant Insurance Company has vehemently argued that the policy was an 'Act Policy' (3^{rd} party policy), she had not filed any copy of the policy to substantiate the same. It is noticed that the copy of the policy was not marked as one of the Exhibit before the Tribunal. Even in this appeal also, no application has been filed to mark it as an Exhibit.

9. Since there is no evidence to substantiate the ground on which this appeal has been filed, I do not find any reasons to interfere with the impugned Judgment and Decree. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

10. Therefore, the appellant Insurance Company is directed to deposit the amount of compensation together with interest and cost as directed by the Tribunal, less if any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit, 1^{st}, 3^{rd} and 4^{th} respondents are permitted to withdraw their share together with interest as directed by the Tribunal, less if any amount already deposited, by filing suitable application. The minor 2^{nd} respondent is hereby permitted to file appropriate application for recording the age of majority before the Tribunal to withdraw her share together with interest since she would have attained the age of majority. The Tribunal thereafter may permit the 2^{nd} respondent (minor) to withdraw her share together with interest.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:-
The Motor Accident Claims Tribunal,/ Additional District Judge, (Fast Track Court - III), Coimbatore.

Copy to:
The Section Officer, VR Section, High Court,Madras.

C.M.A.No.3056 of 2007
and M.P.No.2 of 2007

mr co
A.SK(17.03.2021)