IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2653 of 2011
and M.P.No.1 of 2011
(Through Video Conferencing)

The United India Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.130-A, Attur Road,
Rasipuram. ..Appellant/2nd Respondent

Vs.

1.Chinna Venkatamma
2.Munirathinam
3.Muniraji ..Respondents 1 to 3/Petitioners 1 to 3
4.C.Kaliannan
(4th Respondent was set exparte
in Lower Court and hence notice may be
dispensed with) ..4th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 22.03.2010 made in M.C.O.P.No.1076 of 2008 on the file of the Motor Accidents Claims Tribunal, (Principal District Court) Dharmapuri.

For Appellant	:	Ms.Harini for M/s.M.B.Gopalan
For R1 to R3	:	Mr.M.Sivakumar
For R4	:	Ex-parte

JUDGMENT

With consent of both the learned counsel for the appellant and the respondents 1 to 3, this Civil Miscellaneous Appeal is taken up for hearing and the final disposal.

2. The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 22.03.2010 passed by the Motor Accidents Claims Tribunal (Principal District) Dharmapuri in M.C.O.P.No.1076 of 2008.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,89,000/- as compensation together with

interest at 7.5% from the date of the claim petition till the date of deposit, to the respondents 1 to 3/claimants.

4. The break up of the amount of compensation awarded by the Lower Court are summarised below:-

For loss of income Rs.3,000/- x 12x 1/3x11	Rs. 2,64,000/-
Love and affection (Rs.5,000 each to the claimants 1 to 3)	Rs. 15,000/-
Funeral expenses	Rs. 5,000/-
Transport expenses	Rs. 5,000/-
Total	Rs. 2,89,000/-

5. Aggrieved by the said order, the appellant/Insurance Company has filed the present appeal.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the 4th respondent and directed the appellant/Insurance Company being insurer of the said goods vehicle to pay a sum of Rs.2,89,000/- as compensation together with interest and cost from the date of the claim petition to the Respondent Nos.1 to 3 herein who were the claimants before the Lower Courtand recover the same from the 4th respondent and the appellant.

7. The 4th respondent remained exparte before the Tribunal and hence, notice to the 4th respondent was dispensed with.

8. The respondents 1 to 3 are the wife, daughter and son of the deceased Anjeenappa. The deceased Anjeenappa died in a road accident while attending the loading work along with others in the luggage auto bearing Reg.No.TN-27-Q-6282 insured with the 4th respondent said to have driven in a rash and negligent manner and due to ups and down of the road, the luggage auto toppled on a pit on the side of the road. Due to the said impact, the deceased sustained injuries and later he died in the hospital. Therefore, the respondents 1 to 3 filed the above claim petition before the Tribunal and claimed compensation against the 4th respondent and the appellant.

9.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the insured vehicle was not insured with the appellant/Insurance Company. Secondly, it was argued that the driver of the insured vehicle did not possess a valid driving license. It was further argued that the deceased travelled in the luggage Auto as an unauthorised gratuitous passenger for carrying goods and therefore, the 4th respondent violated the policy conditions. It was therefore submitted that the appellant/Insurance Company was not liable to pay compensation to the respondents 1 to 3.

10. I have heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel for the respondents 1 to 3 and perused all the materials available on record.

11. From a reading of the impugned Judgment and Decree passed by the Tribunal, it is noticed that the Tribunal held that the policy issued by the appellant was in force at the time of accident. The deceased and others were travelling in the insured vehicle and at that time, the driver drove the insured vehicle in a rash and negligent manner and due to ups and down of the road, the auto was toppled on a pit on the side of the road. Further, it has been stated that at that time of accident, the deceased was a third party to the 4th respondent and the appellant.

12. The Tribunal after considering the decision of this Court reported in 2009(1) TNMAC (1) Full Bench, The Branch Manager, United India Insurance Company Limited, Branch Office, Dharmapuri vs. Nagammal and others and another decision of this Court reported in National Insurance Company Limited vs. Baljit Karur and Others 2009 (1) TNMAC 648, held that the principle of pay and recovery is to be applied.

13. This is a pathetic case of the claimants who are the wife and children of the deceased who died in the accident. The Hon'ble Supreme court reported in Bharati AXA General Insurance Co., Ltd. Rep. By its Manager vs. Aandi and Others, (2018) SCC OnLine Mad 13295 has settled the above issue finally and has answered the issue in favour of the Insurance Company with the following observation:-

> 51." .... We are therefore of the considered opinion that the judgment of the two Judge bench in *Shivaraj* v. *Rajendra* referred to *supra* cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of

larger bench of the Hon'ble Supreme Court in *New India Assurance Company* v. *Asha Rani* and *National Insurance Company Ltd.* v. *Baljit Kaur* referred to *supra.* We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.”.

14. Considering the above, the appellant-Insurance Company is directed to deposit a sum of Rs.50,000/- towards no fault liability under Section 140 of the Motor Vehicles Act, 1988, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw same together with interest in the same proportion apportioned by the Tribunal, less any amount already withdrawn, by filing suitable application before the Tribunal.

16. Liberty is given to the respondents 1 to 3/ claimants to recover the balance amount of Rs.2,39,000/- together with interest at 7.5% p.a. from the date of claim petition till the date of deposit from the 4^{th} respondent owner of the vehicle in accordance with law.

17. In the result, this Civil Miscellaneous Appeal is partly allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Principal District Judge) Dharmapuri.

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

+1cc to Mr.C.Prabakaran, Advocate SR.NO..25077

AKM/27.04.2021/2P-2C /

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