IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2170 of 2012
&
M.P.No.1 of 2012

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Road,
Behind Anna Statue,
Thiruvannamalai District - 606 601.
... Appellant/4th Respondent

..Vs..

1.Sajeetha
2.Fouziya (Minor)
3.Yonus (Minor) set exparte before the Tribunal 1 and 3
4.Arrusiya (Minor)
(Respondents 2 to 4 minors Respondents by Mother & NF 1st respondent)
5.Anwar
6.Mahaboobe
7.A.Naseema ...Respondents 1 to 7/Petitioner 1 to7
8.J.Amsa Veni
9.The Branch Manager,
M/s.Reliance General Insurance Co. Ltd.,
Chennai.
10.S.K.Mahaboob Basha ...Respondents/Respondents 1 to 4
(8th & 10th respondents ex parte in lower court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.1215 of 2008 dated 27.09.2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.M.B.Raghavan
For Respondents 1 to 7: Mr.A.Muthukumaran
R8 & R10 - ex parte
R9 - Not ready in notice

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J U D G M E N T

(This Appeal has been taken up for hearing through Video conferencing)

This Appeal has been filed challenging the Award dated 27.09.2011 passed by the Motor Accident Claims Tribunal (Additional District Court, Krishnagiri) in MCOP.No.1215 of 2008.

Brief facts leading to the filing of this Appeal:

2. A person by name Yusuf died on 19.02.2008 as a result of an accident which took place on 18.02.2008 caused by an Eicher lorry bearing registration No.TN31 H 1361 owned by the eight respondent and insured with the tenth respondent. The respondents 1 to 7 are his legal representatives and his dependents. They preferred a claim before the Motor Accident Claims Tribunal Additional District Court, Krishnagiri seeking compensation for the death of yusuf against the owners and insurance companies of the vehicles bearing registration No. TN31-H-6972 and TN25-V-1361. It is the case of the claimants that both the vehicles were at fault and therefore, the owner and the insurance company of the respective vehicles are jointly and severally to pay the compensation amount for the death of yusuf as a result of the accident. The Motor Accident claims Tribunal under the impugned Award dated 27.09.2011 passed in MCOP.No.1215 of 2008 directed the Appellant Insurance company who is the insurer for the vehicle bearing registration No.TN31 H 6972 as well as its owner and also the owner and the insurance company for the vehicle bearing registration No.TN25-V-1361 to pay the compensation amount of Rs.7,91,000/- together with interest and costs as determined in the impugned award. Under the impugned award, the Tribunal fixed the contributory negligence on the Appellant insurance company at 20% and contributory negligence of the ninth respondent insurance company namely Reliance General Insurance Co. Ltd. at 80% and were directed to pay the proportionated sum out of the total compensation of Rs.7,91,000/- together with interest and costs to the claimants.

3. Aggrieved by the same, the insurance company for the vehicle bearing registration No.TN31-H-6972 has preferred this appeal.

4. Heard Mr.M.B.Raghavan, learned counsel for the Appellant and Mr.A.Muthukumaran, learned counsel for the respondents 1 to 7. Respondents 8 and 10 were set exparte both before the Tribunal as well as this Court.

5. It is the case of the Appellant insurance company that the entire liability was only on the ninth respondent insurance company who is the insurer of the vehicle bearing registration No. TN25-V-1361. It is their case that FIR has been registered only against the driver of the vehicle bearing registration No. TN25-V-1361 which is insured with the ninth respondent. Therefore according to them, it is only the eighth and ninth respondents in this appeal who are liable to compensate the claimants. According to them, the accident took place on 18.02.2008 at about 11 p.m. opposite to Cheppakkam Swimming pool in N.H.Road and was caused only by the lorry belonging to the eighth respondent and insured with the ninth respondent. It is also their case that the claim was made only against the eighth and ninth respondents and the Appellant as well as the tenth respondent were only formal parties. According to them, without any documentary evidence, the Tribunal under the impugned award has mulcted the liability on the Appellant and the tenth respondent.

6. Before the Tribunal, the claimants have filed eight documents which were marked as Ex.P1 to Ex.P8. Documents included copy of the FIR dated 19.02.2008, Registration certificate for the lorry, copy of insurance policy, copy of driving licence, copy of family card, copy of postmortem certificate, copy of death certificate and copy of legal heir certificate and three witnesses were also examined on the side of the claimants namely Sajeetha, the wife of the deceased yusuf, Bapjan, an eye-witness to the accident as PW2 and Javid Basha, employer of the deceased as PW3. On the side of the Appellant neither any witness was examined nor any document filed.

7. Excepting for raising the ground that the entire negligence is on the part of the vehicle which is insured with the ninth respondent, the Appellant insurance company has not raised any other ground. The accident has also not been disputed by the Appellant insurance company in this appeal. The involvement of vehicle insured with the Appellant has also not been disputed by the Appellant.

8. The Tribunal as seen from the impugned award has considered all the defences raised by the Appellant including the defence raised in this appeal. If the Appellant was really not liable to compensate the claimants, they ought to have let in oral and documentary evidence in support of their defence. When the claimants have filed oral and documentary evidence in support of their contention and they have also been able to establish before the Tribunal that there is contributory

negligence on the part of the Appellant insurance company also, the Appellant failed to let in any contra evidence to disprove the contributory negligence of their insured as determined by the Tribunal. The Tribunal has considered the evidence and materials available on record and only thereafter has passed the impugned award.

Conclusion:

9. For the foregoing reasons, this court does not find any merit in this appeal. Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company as well as the ninth respondent insurance company are directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as per the ratio apportioned by the Tribunal after deducting the amount already deposited to the credit of MCOP.No.1215 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first, fifth, sixth and seventh respondents are permitted to withdraw their respective shares as per the ratio apportioned by the Tribunal by filing appropriate applications. Insofar as the minor respondents 2, 3 and 4 are concerned, their respective shares of award amount shall be deposited by the Tribunal in any one of the Nationalised Banks till they attain majority and the first respondent/mother of the minors is permitted to withdraw the interest accrued once in six months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Court,
(Motor Accident Claims Tribunal)
Krishnagiri.

2.The Section Officer
V.R.Section, High Court of Madras.

PP(CO)
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