IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3661 of 2011

ICICI Lombard General Insurance Company Ltd.
Swarnambigai Plaza, Ist Floor,
Near New Bus Stand,
Onalur Main Road, Salem - 636 009.
..Appellant/2nd Respondent

Versus

1.Mani S/o. Marimuthu

2.Nagaraj S/o. Marimuthu

3.Malliga W/o. Mani : Respondents 1 to 3/Petitioner

4.Saravanan : 4th Respondent/1st Respondent

(R4 was set ex-parte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 10.08.2010 made in M.C.O.P.No.821 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

For Appellant : Mrs.R. Sreevidhya

For Respondents 1to3 : Mr.M. Selvam

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J U D G M E N T

The Insurance company has filed this appeal against the Judgment and order in M.C.O.P.No.821 of 2009 dated 10.08.2010 on the file of the Motor Accident Claims Tribunal (Principal District Judge), at Dharmapuri questioning the liability on its side.

2. The facts of the case briefly are as under:

On 09.04.2009, when the deceased-Iyyammal was travelling along with goods in TATA ACE bearing registration No.TN 29 AD 0330, it overturned due to rash and negligent driving of the driver. Due to the vehicle capsized, the Iyyammal died after sustaining fatal injuries on the spot. In view of the fatal accident, her legal heirs have filed claim petition in M.C.O.P. No.821 of 2009 seeking for compensation of Rs.5,00,000/- before the Tribunal. After trial, the claimants were awarded a sum of Rs.2,41,000/- as compensation directing the Insurance company to deposit the compensation in terms of pay and recovery basis even though there was policy violation. Being aggrieved over the aforesaid award, the Insurance Company has filed the present appeal seeking for exoneration the Insurance Company from the liability in terms of pay and recovery.

3. The learned counsel for the appellant would submit that the Insurance company ought to have exonerated from the liability in paying the compensation on behalf of the owner of the offending vehicle since the owner of the offending vehicle has violated policy condition if more than 25 persons were allowed to travel in the offending vehicle when there was seating capacity only two in the vehicle and the driver has no valid driving licence at the time of the accident. In view of the the accident had occurred due to rash and negligent driving of the offending vehicle and the violation of the Insurance policy on the side of the owner of the vehicle, the Tribunal has imposed the liability to pay compensation to the claimants on the owner of the vehicle. However, the compensation amount being directed to pay the compensation to the claimants by the Insurance company in terms of pay and recovery is not sustainable and liable to quash the same.

4. On the contrary, the learned counsel for the respondents 1 to 3 would submit that the Tribunal has rightly awarded the compensation in terms of pay and recovery since the vehicle was insured with the aforesaid Insurance company at the time of the accident. Further, the legal heirs of the deceased were third party to the Insurance company and they are son and daughter of the deceased who are taken care by the deceased only. Since they are depending on the income of the deceased, they cannot manage to tackle their immediate requirements, the Insurance company shall pay the compensation to the Claimants and shall recover the same from the owner of the vehicle.

5. Heard both sides and perused the entire documents produced before this Court.

6.On perusal of the entire records, it is seen that the deceased is stated to have travelled in TATA ACE vehicle bearing Registration No.TN 29 D 0330 along with 25 others which is also recorded in the FIR Ex.A1. Further, the TATA ACE is a goods carrier vehicle and the vehicle is not to be allowed to carry passengers according to the policy condition. Moreover, the seating capacity of offending vehicle is to be stated only two seating capacity whereas the driver of the vehicle has allowed the 25 passengers on the aforesaid vehicle to be travelled which is meant for to carry goods material and commercial purpose. In view of the aforesaid facts, the Tribunal has confirmed that the owner of the vehicle has violated policy condition and has not paid any additional premium to carrying the passengers and the same is established by the Tribunal through Ex.A1 and Ex.A3 corroborating with oral evidence of P.W.3. After considering the aforesaid all aspects, the Tribunal has fixed the liability on the owner of the offending vehicle stating that the owner of the vehicle is alone liable to pay the compensation. However, the Tribunal has directed the Insurance company to pay compensation to claimants and recovery from the owner of the offending vehicle for breach of policy condition.

7. After considering the aforesaid fact and circumstances of the case, there is no doubt that if the Insurance company has no liability to pay at all on the fault of the owner of the vehicle, then, this Court is of the considered view that it cannot be compelled to pay the compensation on behalf of the owner of the vehicle on condition to recover the same from him when the Insurance company has proved that the owner of the vehicle has violated the policy condition. Hence, the Insurance company is hereby exonerated from the liability to pay compensation on behalf of the owner of the offending vehicle on the terms of pay and recovery. Further, the claimants are at liberty to seek for compensation from the owner of the vehicle.

8. In the result, the appeal is partly allowed only exonerating the Insurance company from paying the compensation on behalf of the owner of the vehicle. Other terms of the award shall remain the same. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

lbm

To

The Motor Accident Claims Tribunal
and Principal District Judge, Dharmapuri.

+1cc to Ms.R.Sree Vidhya, Advocate, SR.No.13798.

C.M.A.No.3661 of 2011

NMI(CO)
CSR 21.04.2021