IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.379 of 2015
and C.M.P.No.1617 of 2020
in Cross Objection SR.No.114593 of 2018

C.M.A.No.379 of 2015
The Oriental Insurance Co.Ltd,
Motor III Party Claims Office,
Jawaharlal Nehru Salai,
SBI Upstairs, Thiruvallur. .. Appellant

Vs.

1. R.Poonkodi
2. K.Rajasekaran
3. The Managing Director,
   Metropolitan Transport Corporation Ltd.,
   Anna Salai, Chennai-600 002.

4. Iffco Tokio General Insurance Co.Ltd.,
   28, North Usman Road,
   T Nagar, Chennai-600 017.

5. Ashok Leyland Ltd,
   No.1, Sardar Patel Road,
   Guindy, Chennai-32. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2014 made in M.C.O.P.No.914 of 2009 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Thiruvallur, Poonamallee.

For Appellant : Mr.M.B.Raghavan
For R3 : Mr.S.Sivakumar
For R4 : Mr.C.R.Krishnamoorthy
For R5 : No Appearance
For R1 & R2 : M/s.Jayanthi Bhaskar for Mr.J.Mahalingam

C.M.P.No.1617 of 2020
in Cross Objection SR.No.114593 of 2018

1.R.Poonkodi
2.K.Rajasekaran .. Cross objectors

Vs.

1. The Oriental Ins.Co.Ltd.,
   Motor III Party Claims Office,
   Jawaharlal Nehru Salai,
   SBI Upstairs, Thiruvallur. ..1st respondent/Appellant

2. The Managing Director,
   Metropolitan Transport Corporation Ltd.,
   Anna Salai, Chennai-600 002. ..2nd respondent/3rd respondent

3. Iffco Tokio General Ins.Co.Ltd.,
   28, North Usman Road,
   T.Nagar, Chennai-600 017. ..3rd respondent/4th respondent

4. Ashok Leyland Ltd.,
   No.1, Sardar Patel Road,
   Guindy, Chennai-32. ..4th respondent/5th Respondents

Prayer: This Civil Miscellaneous Petition is filed under Order IV Rule 9(4) of AS Rules, to condone the delay of 282 days in representing the above Cross Objection.

For Cross Objectors	: Ms.Y.Jayanthi Bhaskar for Mr.J.Mahalingam
For R1	: Mr.M.B.Raghavan
For R2	: Mr.S.Sivakumar
For R3	: Mr.C.R.Krishnamoorthy

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeal in C.M.A.No.379 of 2015 has been filed by the Insurance Company against the award dated 07.07.2014 made in M.C.O.P.No.914 of 2009 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Thiruvallur, Poonamallee.

2.The Civil Miscellaneous Petition in C.M.P.No.1617 of 2020 in Cross Objection SR.No.114593 of 2018 has been filed by the petitioners/claimants seeking to condone the delay of 282 days in representing the Cross Objection.

3.Both the appeal and unnumbered cross-objection are arising out of the same accident and same award and hence, they are disposed of by this common judgment.

4.The parties are referred to as per their respective ranks in the C.M.A.No.379 of 2015 for the sake of convenience.

5.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.914 of 2009 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Thiruvallur, Poonamallee. The respondents 1 and 2 filed the claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Ganesh who died in the accident that occurred on 26.09.2007.

6.According to the respondents 1 and 2 when their son Ganesh was walking on the Poonamallee high road near Avadi Road junction, One Ashok Leyland open type chassis vehicle bearing chassis No.YPE-623791, Engine No.YPH-467579 driven by its driver in a rash and negligent manner and dashed against their son. Their son died due to the injuries. According to the respondents 1 and 2, the 4th respondent and the appellant being the owner and insurer of the vehicle respectively, are liable to pay compensation. Subsequently, the respondents 1 and 2 impleaded 5th respondent also as 4th respondent in claim petition and claimed compensation against the appellant and respondents 3 to 5. According to the respondents 1 and 2, their son Ganesh was an Engineering College student studying final year and after completion of Engineering, he would get employment since his classmate who was studying B.E. final, got employment and was earning Rs.15000/- per month. Based on this, the claimants claimed compensation.

7.The 3rd respondent herein had filed counter statement and contended that the appellant is "transit insurer" and 4th respondent is "General Transmit Insurer" and policy was in force at the time of accident. The 3rd respondent received the chassis number only on 05.10.2007 and till then the 5th respondent/Ashok Leyland is the owner of the chassis. The appellant and respondents 4 and 5 alone are liable to pay the compensation.

8.The appellant filed counter statement and stated that on the date of accident, the 3rd respondent was the owner of the chassis and there is no contract between the appellant and the 3rd respondent and hence, the appellant is not liable to pay any compensation. The policy issued to the 5th respondent by the appellant is for limited purpose and it is ceased when 5th respondent sold the chassis to 3rd respondent. In any event, the accident had occurred only due to the negligence on the part of the deceased who was suddenly trying to cross the road and for this, the appellant is not liable to pay compensation.

9.The 4th respondent filed counter statement and contended that only the deceased was responsible for the accident and there was no negligence on the part of the driver of the vehicle. The policy issued by 4th respondent is only "General Transmit Policy" and as per terms and conditions, the 4th respondent is not liable to indemnify transit vehicle and only the 2nd respondent is liable to pay the compensation.

10.Before the Tribunal, the 1st respondent/mother of the deceased examined herself as P.W.1, one eyewitness namely Pradish Buvan was examined as P.W.2. One Ramesh Kannan was examined as P.W.3 and marked thirteen documents as Exs.P1 to P13. On the side of the respondents, one Muthuvel was examined as R.W.1, Narendiran was examined as R.W.2 and Arunkumar was examined as R.W.3 and marked eight documents as Exs.R1 to R8.

11.The Tribunal, considering the oral and documentary evidence, held that the driver of the chassis is responsible for the accident. Further, on appreciation of the materials on record, the Tribunal held that the appellant as transit insurer of the chassis is liable to pay the compensation and awarded a sum of Rs.15,00,000/- to the respondents 1 and 2.

12.Challenging the compensation granted by the award dated 07.07.2014 made in M.C.O.P.No.914 of 2009, the appellant-Insurance Company has come out with the present appeal.

13.The learned counsel appearing for the appellant contended that the Tribunal having found that the 3rd respondent was the owner of the chassis and was responsible at the time of accident, the Tribunal erred in fastening the liability on the appellant when there is no insurance policy is taken by the 3rd respondent and there is no contract between the appellant and 3rd respondent. The Tribunal misconstrued the nature of policy taken by the 5th respondent and failed to see that the policy was terminated on the sale of chassis to 3rd respondent/Transport Corporation. The 3rd respondent after becoming owner of the chassis, did not take any insurance policy from the appellant. There is no evidence let in by the 3rd respondent to show that the chassis was delivered to the 3rd respondent only on 05.10.2007. In any event, the respondents 1 and 2 are not entitled for any enhancement as the Tribunal has awarded the entire amount claimed by the respondents 1 and 2 and they have not filed any separate appeal and the Cross Appeal is not maintainable in view of the amounts claimed by the respondents 1 and 2 is granted by the Tribunal and prayed for setting aside the award of the Tribunal.

14.Heard the learned counsel appearing for the appellant as well as the learned counsels for the respondents 1 to 4 and perused the materials available on record.

15.From the materials on record, it is seen that the chassis manufactured by 5th respondent was purchased by 3rd respondent and the sale was concluded on 30.06.2007 when the 3rd respondent paid the amount and when the 5th respondent issued sales certificates which were marked as Ex.R6 and Ex.R7. Before chassis was delivered by the 5th respondent to the body building point of the

3rd respondent, the accident has occurred on transit from manufacturing place of 5th respondent to body building point. From the materials on record, it is seen that the 5th respondent has taken two insurance policies, one is taken from 4th respondent and the General Transmit insurance policy was taken for group of chassis including the offending chassis. The 5th respondent took the 2nd policy from the appellant which is transit policy. The 5th respondent took the policy from the appellant as without transit policy, the registering authority will not grant temporary registration. The intention and purpose of transit policy taken by the 5th respondent from the appellant is to get temporary registration when the chassis sold to 3rd party like 3rd respondent and to deliver the same at body building point as per the instructions of purchaser. From the nature of policy and purpose of policy taken for transit, it is clear that 5th respondent manufacturer has taken policy on behalf of the purchaser and policy will cover the transit of chassis from manufacturing unit, to the body building unit of purchaser, i.e. 3rd respondent herein and the policy will continue till the period to which the same was issued. The contention of the learned counsel for the appellant that policy issued by the appellant becomes terminated when the chassis was sold by the 5th respondent to 3rd respondent is without merits. As already stated, the purpose of transit policy taken by the 5th respondent is only to get temporary registration in the name of purchaser and to cover the risk while transit till the same is delivered to the purchasers. The Tribunal has properly appreciated the nature of policy issued by the appellant and held that even when the 3rd respondent has become owner, the policy continues and the appellant is liable to pay compensation. The said finding is not perverse and there is no error in the said finding warranting interference by this Court.

16.From the materials available on record, it is seen that the deceased was an Engineering College student at the time of death. The respondents 1 and 2 have substantiated the same by providing documents. They have also examined P.W.3 who was the classmate of the deceased and produced salary certificate of P.W.3. In view of the evidence of P.W.3 and salary of P.W.3, the Tribunal has fixed the notional income and awarded for compensation for loss of income and the same is not excessive. The total compensation awarded by the Tribunal is also not excessive or meagre.

17.In the result, C.M.A.No.379 of 2015 and C.M.P.No.1617 of 2020 are dismissed and consequently, Cross Objection SR.No.114593 of 2018 is rejected at the SR stage itself. The sum of Rs.15,00,000/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs is hereby 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 to the credit of M.C.O.P.No.914 of 2009. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The III Additional District Judge,
   Motor Accidents Claims Tribunal,
   Thiruvallur,
   Poonamallee.

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

+1cc to M/s.N.Vijayaraghavan, Advocate in SR.NO..12527
+2cc to M/s.J.Mahalingam, Advocate in SR.NO..12271
+1cc to M/s.C.R.Krishnamoorthy, Advocate in SR.NO..12335
+1cc to M/s.S.Sivakumar, Advocate in SR.NO..12566

C.M.A.No.379 of 2015
and C.M.P.No.1617 of 2020
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GMR(CO)
RV(07/10/2020)