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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA No.1398 of 2013

and

M.P No.1 of 2013

The Divisonal Manager
United India Insurance Company Ltd.,
Katpadi Road
Vellore-632 004.

... Appellant/2nd Respondent

..VS..

1.Susheela Kumar

2.Kishore Kumar (Died)

....Petitioner

(R1 is L.R of the deceased R2
viz., Kishore Kumar vide order
of this Court dated 04.03.2021
made in CMP No.1 of 2015)

3.R.Elavarasan

... Respondents/1st Respondent

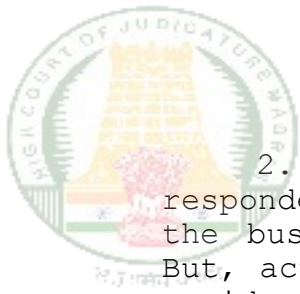
Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.07.2012 made in M.C.O.P.No.673 of 2007, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Vellore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Sivakumar for R2
R1-died
Notice unserved to R3

J U D G M E N T

Dissatisfied with the judgment and decree, dated 06.12.2012, passed by the Tribunal awarding compensation of Rs.2,78,000/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the Tribunal.



2. The claim petition has been preferred by the respondents/claimants that the first respondent is the owner of the bus and the second respondent is the insurer of the bus. But, actually the owner of the vehicle which was involved in the accident has not been impleaded as party in the said claim petition. The appellant/insurance company has nothing to do with the vehicle involved in the accident bearing Registration No.TN-20-AZ-4556. Therefore, when there is no policy covered as against the vehicle involved in the accident, there is no liability for the insurance company to pay such amount. But, the Tribunal has wrongly fixed the liability as against the insurance company.

3. After elaborately discussed in the grounds raised in the appeal, the owner of the vehicle which was involved in the accident has not been impleaded as party in the claim petition and hence, the insured vehicle of the appellant insurance company is not liable to pay compensation to the claimants. These facts are also not disputed by the claimants. The accident was happened in the year 2007 and the claim petition was also filed in the same year. Also, the award has been passed in the year 2012 itself and the appeal is pending for more than 8 years. Pending appeal, the second respondent/claimant, who is the husband of the first respondent/claimant died. In such circumstances, the first respondent/claimant should not be suffered by dragging her to approach the court concerned seeking for enhancement of compensation and for taking steps to implead necessary parties. In the above circumstances, it is agreed by both the parties to arrive at a consensus between themselves. On instructions, the learned counsel for the appellant would submit that without prejudice to any contention raised in the appeal, the appellant insurance company is agreed for the settlement of Rs.1,00,000/- as compensation payable to the claimant. The learned counsel for the claimant has also agreed for the said compensation amount.

4. In view of the consensus arrived between the parties, no further adjudication needs in the instant appeal and the appellant insurance company is directed to deposit a sum of Rs.1,00,000/- along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made by the insurance company, the first respondent/claimant, as legal representative of the deceased second respondent/claimant is entitled to withdraw the same by filing necessary applications before the Tribunal. The appellant insurance company is entitled to withdraw the balance amount, if any, after adjusting the said amount of Rs.1,00,000/- payable to the claimant, on filing necessary application before the Tribunal.



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5. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Vellore.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.21246

CMA.No.1398 of 2013
and
M.P No.1 of 2013

AD(CO)
CB(20/09/2021)