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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.02.2021
Judgment Delivered on : 25.03.2021

CORAM
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2359 of 2013

The Divisional Manager,
New India Assurance Co. Ltd.,
Divisional Office - I,
Bharathi Road, Cuddalore.

... Appellant /2nd Respondent

Vs.

1. Arul @ Arul Arasi
W/o. Venkatesh

2. Anitha (Minor)
D/o. Venkatesh

3. Vishnupriya (Minor)
D/o. Venkatesh
(minor respondents 2 and 3
rep. By mother and NF I respondent)

4. Rasaya
W/o. Pattusamy

5. P.Murugan
S/o. Pattusamy

... Respondents/Petitioners

6. P.Murugan
S/o. Pattusamy

...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.254 of 2006 dated 31.12.2008 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr.M.B.Gopalan
For Respondents : Ms.Ramya V.Rao for R1 to R4

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 31.12.2008 passed



in MCOP.No.254 of 2006 by the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

2. The case in brief is as follows:

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On 22.08.2005 at 10.00 a.m., one Venkatesh was driving the ambassador Car bearing Registration No. TN-31-Y-9098 at his extreme left side of the road at moderate speed. After attending marriage function, the said Venkatesh was returning home near Pethanayakkankuppam. At that time, a cow was crossed the road, all of a sudden the Venkatesan swerved the car, right to avoid collision against the cow. The car went out of control and dashed against the palm tree. In the result, some occupants of the car were injured and some of them are died. After post-mortem, the body of the deceased was brought home by an ambulance.

3. Mr.M.B.Gopalan, learned counsel for the appellant/Insurance Company vehemently objected stating that the cause of accident and also the violation of policy. The Insurance Company is not liable to pay compensation to the claimants. He further submitted that the award is high and it has to be set aside. He had relied on the following Rulings:

(i) Divisional Manager, Oriental Insurance Co. Ltd., Vellore Vs. R.Damodharan (2020(1) TNMAC 646)

(ii) National Insurance Company Ltd., Puducherry Vs. Rani and others (2020 (1) TNMAC 593)

4. Ms.Ramya V. Rao, learned counsel for the respondents/claimants submitted her arguments. As per her submissions, the claimants in MACTOP.No.254 of 2006 are the minor children and widow of the deceased/Venkatesan. The appellant/Insurance Company is liable to pay compensation. The Tribunal after due enquiry, calculated the compensation, since the award granted by the Tribunal is on the lower side. The appeal lacks merits and it has to be dismissed.

5. Whether the appellant/Insurance Company is entitled to setting aside the order passed by the Tribunal.

6. Perused the claim petition filed by the respondents/claimants before the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore, in MCOP No.254/2006, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Tribunal, it is



found that the ambassador car bearing Registration No.TN 31 Y 9090 owned by the first respondent in MCOP.No. 254 of 2006. It was driven by the husband of the first claimant in MCOP.No.254 of 2006 as per the evidence available before the Tribunal. The second respondent/Insurance Company had filed a counter, had objected to the claim petition stating that the deceased drove the car without observing the Rules and Regulations. In the counter stated that the vehicle was not insured with the second respondent. Insurance policy condition states that the vehicle is not insured with regard to risk of the occupants of the car. When that be the case, the Tribunal instead of dismissing the claim petition, had passed the award and fastened the liability on the second respondent/Insurance Company. Aggrieved by the same, the second respondent/Insurance Company had filed this appeal wherein disputing the liability. The learned counsel for the appellant relied on the following Rulings of this Court:

(i) Divisional Manager, Oriental Insurance Co. Ltd., Vellore Vs. R.Damodharan (2020(1) TNMAC 646)

"Scope of Section 163 A cannot be expanded so as to cover borrower of vehicle - Entertaining such a claim would defeat object and purpose of Sections 147 & 166 -Court bound to consider terms and conditions of Policy - Claim Petition, held, not maintainable, where vehicle was borrowed from registered Owner - Award passed by Tribunal quashed."

(ii) National Insurance Company Ltd., Puducherry Vs. Rani and others (2020 (1) TNMAC 593)

Provisions under Sections 147, 166 & 163-A to be read conjointly for purpose of granting benefit of Special Provision under Section 163-A - Personal Accident Coverage also cannot be considered, when victim is not a registered Owner -But only a Borrower of vehicle of registered Owner - Award passed by the Tribunal set aside.

In the light of the above reported rulings of this Court, the contentions of the learned counsel for the appellant/Insurance Company is found acceptable. Therefore, this Court is of the considered view that the findings of the Tribunal is against law. Therefore, the award of the Motor Accident Claims Tribunal, Cuddalore is to be set aside.

8. The point for consideration is answered in favour of the appellant/Insurance Company and against the respondents/Claimants.



In the result, this Civil Miscellaneous Appeal is allowed. The award passed by the learned Motor Accidents Claims Tribunal, Cuddalore in MCOP.No.254 of 2006 dated 31.12.2008 is set aside. No costs.

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Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Dh

To

1. The Motor Accidents Claims Tribunal /
Principal District Judge, Cuddalore.
2. The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.2359 of 2013

CP(CO)
GN(27/09/2021)