



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.530 of 2011 and
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
Coimbatore-2. ... Appellant/3rd respondent

Vs.

1. Pandithurai
2. Minor Sarathkumar, 16 years,
rep. by his guardian, father and next friend
Mr.Pandithuria. ... 1,2 Respondents/ Claimants
3. N. Ganesan
4. The Principal,
M/s St. John Matriculation School,
Press Colony, Coimbatore-19.
... 3,4 Respondents/1,2 respondents

Prayer:

Civil Miscellaneous Petitions filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 11.02.2010 passed in M.C.O.P.No.214 of 2008 by the I Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

For Appellant : S. Arunkumar

For Respondents : Mr.G.Vinodhkumar - for R1 and R2

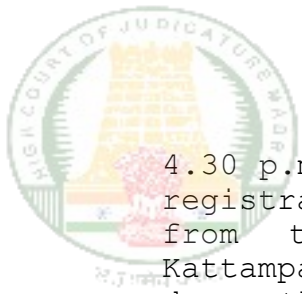
O R D E R

Aggrieved over the orders passed by the Tribunal, the Insurance company is before this court to set aside the same.

2. The first and second respondents/ Claimants have filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the death of one Ramathal, wife of the first claimant and mother of the second claimant.

3. The brief case of the claimants is as follows:

The deceased was working as Maiden Servant (Aya) in the 4th respondent school (herein). On 21.06.2007 at about



4.30 p.m. she was engaging her work in the school van bearing registration No.TN29U 5962 to drop the children to their home from the School to Kuppepalayam and while nearing Kattampatty-Perianaickenpalayam Road, the driver of the van drove the vehicle in a rash and negligent manner and took 'U' turn in high speed and applied the break, due to which the deceased was thrown out from the van and sustained grievous injuries all over her body and immediately she was admitted to Srinivasa Hospital Veerapandi Privu and then taken to Coimbatore Medical College, where, she died on 22.06.2007 at 6.30 p.m. According to the claimants, the rash and negligent driving of the driver of the van was the cause of accident and since the owner of the van insured his vehicle with the insurance company, all them are liable to pay compensation to them.

4. The driver and the owner of the Bus remained exparte and the insurance company contested the claim petition by filing counter affidavit.

5. Before Tribunal, the first claimnat and one another witness were examined as PW1 and PW2 and marked Ex.P1 to Ex.P7. On the side of the insurance company, two witnesses were examined as RW1 and RW2 and marked Ex.R1 to Ex.R3.

6. After analysing the evidence on record, the Tribunal totally awarded a sum of Rs.3,60,000/- and directed the insurance company to pay a sum of Rs.1,00,000/- to the claimants and directed the driver and the School to pay the remaining amounts. Aggrieved over the orders passed by the Tribunal, the insurance company is before this court by filing the present appeal.

7. The learned counsel appearing for the appellant/ insurance company submitted that though the vehicle was used for commercial purpose, which is contrary to the terms of the contract, the Tribunal has erred in holding that the appellant is liable to pay compensation of Rs.1,00,000/-. He further submitted that originally, the said vehicle was insured in the name of S.Chelladurai, subsequently, the ownership of the vehicle was transferred in the name of the fourth respondent herein, however, it was not informed to the insurance company. According to him, as per the agreement, there is no contract between the insurance company and the fourth respondent and on that ground alone, the claim petition against the insurance company is not maintainable. It is his contention that unless the respondents proved that there exist an enforceable contract against the insurance company, the claim made by the claimants is not maintainable and hence the Award passed by the Tribunal has to be set aside, as against this appellant/insurance company.



(iii) On such deposit being made by the insurance company, the claimants are at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

The I Additional Subordinate Judge,
Motor Accident Claims Tribunal, Coimbatore.

+1cc to Mr.S.Arun Kumar, Advocate SR.No. 9764

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A.SK(09.09.2021)