IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021
CORAM:
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.3655 of 2012

The Oriental Insurance Company Ltd.,
No.8,Esplanade, III Floor,
UIL Buildings,
Chennai -600108. ...Appellant/2nd Respondent

..vs..

1.M.Mala
W/o.K.Mani

2. K.Mani,
S/o.Krishnan ..1st & 2nd Respondents/Petitioners

3.Vijayagopall ...3rd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2011 made in M.C.O.P.No. 2865 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC-II, Chennai.

For Appellant : R.Sreevidhya
For Respondent : Mr.N.Manokaran
For Mr.V.Arul – R1&R2
Notice served - R3

J U D G M E N T

Dissatisfied with the judgment and decree, dated 28.06.2011, passed by the tribunal awarding compensation of Rs.2,64,000/- along with interest at the rate of 9% per annum, the Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimants/ 1st & 2nd respondents herein on 13.05.2006 at about 1.00 pm while the claimants' son namely M. Mathi was travelling as cleaner in a paddy harvest vehicle bearing Reg.No.TN23-AX-2979, the driver of the said vehicle drove the same in a rash and negligent manner and suddenly turned the vehicle, due to which the deceased fell down and sustained grievous injuries and died. The Claimants/1st & 2nd Respondents filed a claim petition before the tribunal, claiming compensation of Rs.10,00,000/- for the death of his son against the owner and insurer of the vehicle. After analyzing both oral and documentary evidences, the Tribunal has fixed the negligence

on the part of driver of the vehicle and awarded Rs.2,64,000/- as total compensation along with interest at the rate of 9% p.a payable by the insurance company being insurer of the said vehicle.

3. The learned counsel appearing for the appellant/Insurance company has submitted that the tribunal has failed in holding that the appellant is liable to pay compensation without appreciating the scope of their defence and the terms of the policy. The tribunal has also failed to note that a Harvester to be used only to cut the grains and to collect the same and there is only one seat unlike other vehicle and there is no separate seat for cleaner or coolies. Admittedly, the policy did not cover the risk of workman or any other employees since the very purpose of harvester is to use only in field and as such covering the risk or collecting premium does not arise . In view of the policy conditions, the insurance company is not liable to pay any compensation to the claimants. Therefore, the liability fastened on the insurance company is liable to be set aside.

4. On the other hand, the learned counsel appearing for the claimants/1st & 2nd respondents submitted that the tribunal has observed in the award that the there is no specific mention in the policy/Ex.R3 marked by the insurance company that only one person is allowed to travel in the vehicle and the policy does not covers for the remaining persons travelling in the said vehicle. Therefore, in the absence of any conditions, the tribunal has fixed the liability on the insurance company to pay the compensation and the same is proper and does not require any interference by this Court.

5. Heard the learned counsel appearing for the appellant/ Insurance Company and the learned counsel appearing for the 1st & 2nd respondents/ claimants and perused the materials available on record.

6. Before the tribunal, on the side of the claimants three witnesses were examined as P.W.1 & P.W.2 and marked seven documents Exhibits P1 to P7. On the side of the respondents one witness RW1 was examined and three documents were marked Ex.R1 to R3.

7. The main contention raised by the learned counsel for the appellant/insurance company is with regard to the liability. According to the learned counsel for the appellant, the deceased had travelled on the paddy harvester as an unauthorised person and as per the policy conditions, there is no policy coverage for other persons except the driver of the insured vehicle. The learned counsel for the appellant/insurance company has brought to the notice of this Court the Section 11(Sub Section D) of the

Kisan Package Policy. The relevant portion of the policy is extracted below;

"Sub Section D - Accident to the insured or Driver:
The company will pay to the insured or to his legal representative the sum or sums hereinafter set forth the insured or any person who is driving the vehicle on the insured's order or with his permission (hereinafter called the Driver)shall sustain any bodily injury resulting solely and directly from accident whilst independently of any other cause shall within twelve calendar months of its occurrence be the sole and direct cause of

(a) death of the driver
(b) the total and irrecoverable loss of sight of both eyes or total and irrecoverable loss of use of two feet or of one hand and one foot or of such loss of sight of one eye and such loss of use of one hand or one foot.
(c) The total and irrecoverable loss of sight of one eye or total and irrecoverable loss of use of a hand or a foot.
(d) Permanently totally and absolutely disabling the driver from engaging in being occupied with or giving attention to any employment or occupation of any description of whatsoever.

Provided always that the Company shall not be liable under this section for

i. compensation under more than one of the clauses (a),(b),(c) or (d) in respect of same injury or disablement.
ii. Payment of compensation in respect of injury or disablements arising out of or contributed or traceable to any disability existing on the date of issue of the policy.

iii. Payment of compensation in respect of death or disablement or injury due to intentional self injury suicide or attempted suicide, insanity.

iv. Any claim if such claim be in any manner fraudulent or supported by any fraudulent statement or device whether by the insured or the driver or any person on behalf of them."

8. It is clear from the said Kissan Package Policy that there is no specific coverage for the cleaner or any other persons travelled in the vehicle except the driver. Therefore, this Court is of the view that the liability fastened on the insurance company is not sustainable and liable to to set aside.

9. At this stage, it is brought to the knowledge of this Court by the learned counsel for the respondents 1 & 2/claimants that by virtue of interim order passed by this Court dated 06.06.2013, the Insurance Company/appellant herein had deposited the entire compensation amount awarded by the tribunal. Subsequently, this Court by order dated 22.07.2014 permitted the claimants/respondents 1 & 2 herein to withdraw a sum of Rs.75,000/- each from the deposited amount and the same has also been withdrawn by the claimants.

10. Considering the said submission made by the learned counsel for the respondents 1 &2/claimants and in view of the stand taken by this Court that the Insurance Company is not liable to pay the compensation as per policy conditions, the insurance company is permitted to recover the amount withdrawn by the claimants from the owner of the vehicle in the manner known to law. The Insurance Company is also permitted to withdraw the remaining deposited amount by filing appropriate application before the tribunal. Liberty is also given to the respondents 1 & 2/claimants to proceed as against the owner of the vehicle for compensation, by filing appropriate application before the tribunal, in the manner known to law.

11. In the result, the liability fastened on the appellant/insurance company by the tribunal in M.C.O.P.No. 2865 of 2006, dated 28.06.2011 is set aside and the Civil Miscellaneous Appeal is allowed to that extent. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
1. The Additional District Judge (FTC-II),
   Motor Accidents Claims Tribunal,
   Chennai.

2. The Section Officer,
   VR Section,
   High Court, Madras
+1 CC to M/s.R. Sreevidya, Advocate sr 17502.

CMA.No.3655 of 2012

CP(CO)
SP(01/11/2021)