IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1733 of 2021 and
C.M.P.No.9128 of 2021

N.Premavathi ...Appellant/1st Respondent

Vs.

1.Arjunan

2.Alagammal

3.Dhanam

4.ICICI Lombard General Insurance Co. Ltd,
Zenith House, Keshavrao Marg, 2nd Floor,
Mahalakshmi, Mumbai – 400 034
Branch Office Block No.7, Ward – C,
Omalur Main Road, Adjacent to Bus Stop,
Salem – 9. ...Respondents/Petitioners & 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree order dated 23.04.2015 made in M.C.O.P.No.64 of 2011, on the file of the Motor Accidents Claims Tribunal, (Subordinate Court, Mettur).

For Appellant : Mr.K.Suryanarayanan for
Mr.Mohamed Riyaz

For Respondents: Mr.S.Saravanan for
Mr.M.Mariappan for R1 to R3
M/s.R.Sreevidhya for R4

JUDGMENT

This appeal has been filed by the owner of the insured vehicle insured with the 4th respondent herein. This appeal has been filed by the appellant on the ground that the Tribunal erred in holding the appellant and the 4th respondent jointly liable to pay the compensation determined by the Tribunal. Before the Tribunal, the 4th respondent/Insurance Company had taken a stand that the driver of the insured bus did not possess a valid driving license. However, this was rejected by the Tribunal after examining the Ex.P7 driving license of the driver of the insured bus. It is therefore submitted that question of the owner liable to pay the compensation does not arise in the light of the insurance. The date of accident as per the claim statement in as per Ex.P1 FIR is 02.11.2010 whereas the driving license of the driver was valid upto 06.06.2012. Therefore, liability if any was that of the appellant and since appellant had a valid insurance cover issued by the 4th respondent, the amount was to be paid by the 4th respondent/Insurance Company.

2.The impugned order is defended by the 4th respodent/Insurance Company by its counsel on the ground that the Tribunal has awarded a higher compensation by wrongly considering the age of the deceased. According to her, the compensation that has been determined by the Tribunal ought to have been lower.

3.The learned counsel for the 4th respondent further submits that the Insurance Company has also filed an appeal against the impugned judgment and decree dated 23.04.2015 and that it is yet to be numbered, due to the defects pointed out by the Registry.

4.On the other hand, the learned counsel for the respondents 1 to 3 who are the legal heirs of the deceased Govindhan submits that there is no basis on which the quantum of compensation determined by the Tribunal can be disturbed in this appeal based on the oral submission of the learned counsel for the 4th respondent/Insurance Company.

5.He submits that there are no material to substantiate the aforesaid submission. He further submits that in absence of cross appeal or appeal by the 4th respondent/Insurance Company, such arguments have to eschewed. He further submits that as on date the appellant has already paid a sum of Rs.5,88,000/- in the EP proceedings initiated by the respondents 1 to 3. He prays for the appellant may be already withdraw the same as the liability is that of the 4th respondent/Insurance Company is being determined under the contract of insurance.

6.Heard the learned counsel for the appellant and the respondents.

7.The Tribunal has erred in directing the appellant and the 4th respondent jointly liable to pay the compensation determined in the impugned judgment and decree dated 23.04.2015 in M.C.O.P.No.64 of 2011. The Tribunal ought to have concluded the appellant and the 4th respondent are jointly and severally liable and since the insured vehicle was validly covered by a Insurance

Policy issued by 4th respondent, the 4th respondent/Insurance Company should have been directed to deposit the award amount.

8.Under these circumstances, I find merits in the appeal filed by the appellant/ owner of the insured bus. Accordingly, this appeal stands allowed with the following directions:-

(i)the appellant is permitted to file appropriate application for refund of the amount deposited in the E.P proceedings filed by the respondents 1 to 3.

(ii)The 4th respondent/Insurance Company is directed to remit the award amount together with interest accured thereon at 7.5% from 10.10.2011 within a period of six weeks from the date of receipt of a copy of this order

(iii)on such amount being remitted by the 4th respondent before the Tribunal, the claimants/respondents 1 to 3 herein, are permitted to withdraw the aforesaid amount in the same proportion as was orderd by the Tribunal less any amount already withdrawn.

9.Accordingly, this appeal stands allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. ICICI Lombard General Insurance Co. Ltd,
   Zenith House, Keshavrao Marg, 2nd Floor,
   Mahalakshmi, Mumbai - 400 034
   Branch Office Block No.7, Ward - C,
   Omalur Main Road, Adjacent to Bus Stop,
   Salem - 9.

2. The Motor Accidents Claims Tribunal
   (Subordinate Court, Mettur)

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

+1 CC to Mr.M.Mohammed Riyaz, Advocate sr 27993.
+1 CC to M/s.R. Sreevidya, Advocate sr 28107
+1 CC to Mr.M.Mariappan, Advocate sr 28335.

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SSV(CO)
SP(10/11/2021)