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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 745 of 2018

and

C.M.P.Nos.6330 of 2018 & 12275 of 2019

The Oriental Insurance Company Ltd.,
Motor Third Party Claims, HUB,
No.217, Prakasam Salai,
Broadway, Chennai - 600 108.

... Appellant/2nd Respondent

Vs

1. P.Indira
2. (Minor) P.Salaivalli @ Solai
3. (Minor) Soundarya
4. (Minor) P.Vijayalakshmi
(Respondents 2, 3 & 4 are represented
by their mother and next friend P.Indira)
5. P.Shanmughapriya @ Priya
6. M.Nallu Gounder
- 7.N.Chellammal @ Chellam
- 8.C.Karthikeyan

... Respondents/Petitioners

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 07.12.2017 made in M.C.O.P.No. 8388 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 7 : M/s.P.T.Saleem Fathima
for Mr M.Swamikkannu.

JUDGMENT

This appeal has been filed by the Insurance Company, challenging its liability to pay compensation under the impugned order dated 07.12.2017, passed by the Motor Accident Claims



Tribunal, Chief Court of Small Causes, Chennai, in M.C.O.P.No.8388 of 2015.

2. The appellant has challenged the impugned award on the following grounds.

a) the deceased himself is a tort-feasor.

b) The Tribunal has erroneously converted the claim filed under Section 166 of the Motor Vehicles Act, 1988 into a claim filed under Section 163-A of the Motor Vehicles Act, 1988 and has determined the compensation.

3. As per the respondents/claimants' own pleadings, they have stated that the deceased was earning a sum of Rs.20,000/- to Rs.25,000/- per month and was working in the office of the Marungapuri Panchayat Union Office, Trichy District, in which case, the claim under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable.

4. Insofar as the first contention raised by the appellant Insurance Company that the deceased himself is a tort-feasor is concerned, this Court is in agreement with the contention of the appellant Insurance Company for the following reasons:

a) No third party vehicle was involved in the accident,

b) In the claim petition filed before the Tribunal, the respondents/claimants themselves have admitted that the deceased who was the rider of the insured motor cycle, fell down from the motor cycle, due to the bad condition of the road.

b) The First Information Report has also been registered only against the deceased which has been marked as Ex.P1. Therefore it is clear that the deceased himself was a tort-feasor, for which, the appellant Insurance Company cannot be held liable to pay the compensation.

c) Further, the Insurance policy marked as Ex.R2 also does not give coverage for the driver of the insured motor cycle.

5. Insofar as the second contention raised by the



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appellant Insurance Company is concerned, this Court will have to necessarily agree with the said contention for the following reasons:-

a) In the claim petition, the respondents/claimants have pleaded that the deceased was earning a sum of Rs.20,000/- to Rs.25,000/- per month and was working in Marungapuri Panchayat Union Office, Trichy District.

b) The Tribunal under the impugned order has converted the claim into a claim under Section 163-A of the Motor Vehicles Act, 1988. For a claim filed under Section 163-A of the Motor Vehicles Act, 1988, the maximum income of the accident victim should not exceed Rs.40,000/- (Rupees Forty Thousand only) per annum. Admittedly, when the monthly income of the deceased is between Rs.20,000/- to Rs.25,000/- as per the respondents/claimants' own pleading in the claim petition, the Tribunal ought not to have converted the claim under Section 163-A of the Motor Vehicles Act, 1988. Therefore, the second contention is also answered in favour of the appellant Insurance Company.

6. For the foregoing reasons, this Court is of the considered view that the impugned award has been passed contrary to the evidence available on record and also contrary to law.

7. Accordingly this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

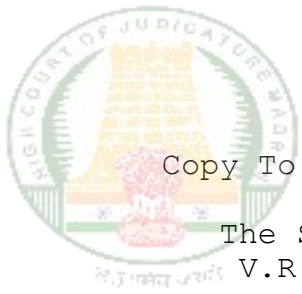
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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Chief Court of Small Causes,
Chennai.



Copy To

The Section Officer,
V.R.Section, High Court, Madras - 104.

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C.M.A. No. 745 of 2018

PPA (CO)
GN (15/11/2021)