IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3624 of 2014
and M.P.No.1 of 2014

The Manager,
United India Insurance Co., Ltd.,
33/24-C, Gandhi Nagar,
Behind Central Theater,
Krishnagiri - 685 001. ... Appellant/4th Respondent

Vs.

1. K.Dhanapal ...1st Respondent/Petitioner
2. R.Vediappan

3. The Oriental Insurance Company Ltd.,
   Siddaveerappa Chetty Street,
   Dharmapuri.

4. K.Sivalingam ... Respondents 2 to 4/
   Respondents 1 to 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the judgment and decree dated 23.08.2011 passed in M.C.O.P.No.863 of 2008 on the file of the Motor Vehicles Accidents Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Appellant : Ms.I.Malar

For Respondents 1,2&4 : No appearance

For Respondent 3 : Mr.M.Krishnamoorthy

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the insurance company challenging its liability to pay compensation under the impugned award dated 23.08.2011, passed by the Motor Vehicles Accidents Claims Tribunal, Chief Judicial Magistrate, Dharmapuri in M.C.O.P.No.863 of 2008.

2. The appellant insurance company has challenged the impugned award on the ground that even though the Tribunal under the impugned award has given a categorical finding that the rider of the motorcycle insured with the third respondent alone is responsible for the cause of the accident, has erroneously held that the appellant insurance company should jointly and severely pay the determined compensation along with the third respondent insurance company.

3. The learned counsel appearing for the appellant insurance company drew the attention of this Court to the relevant findings of the Tribunal. As seen from the findings, as rightly contended by the learned counsel appearing for the appellant, the Tribunal based on preponderance of probability and based on the registration of F.I.R. against the rider of the motorcycle insured with the third respondent has given a categorical finding that only the third respondent is liable to pay compensation. But, however in the operative portion of the impugned award has erroneously held that the appellant insurance company is also liable to pay compensation along with the third respondent insurance company.

4. The appellant is the insurer of the vehicle bearing Registration No.TN 24 B 8806 and the third respondent is the insurer of the vehicle bearing Registration No.TN 24 C 0895. As seen from the evidence available on record, it is very clear that only due to the rash and negligent driving of the rider of the motorcycle insured with the third respondent the accident had happened. The Tribunal has also categorically given a finding accordingly but however in the operative portion of the award it has erroneously held that the appellant insurance company is also liable to pay compensation along with the the third respondent insurance company. It is also brought to the notice of this Court by the learned counsel appearing for the third respondent that the appeal filed by the third respondent as against the impugned award in C.M.A.No.1862 of 2013 was also dismissed by this Court on 23.07.2014.

5. After giving due consideration to the aforementioned factors, this Court is of the considered view that the impugned award passed against the appellant insurance company will have to be necessarily set aside and accordingly the impugned award dated 23.08.2011, passed by the learned Chief Judicial

Magistrate, Motor Accidents Claims Tribunal, Dharmapuri in M.C.O.P.No.863 of 2008, as against the appellant alone is hereby set aside by this Court and the appeal is allowed. In case the appellant insurance company has deposited any portion of the award amount, they are permitted to withdraw the same by filing appropriate application before the Tribunal. In case the claimants have already withdrawn the amount deposited by the appellant insurance company, the appellant insurance company is permitted to seek reimbursement of the same from the third respondent insurance company. Consequently, the connected miscellaneous petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kk
To

The Chief Judicial Magistrate,
Motor Vehicles Accidents Claims Tribunal,
Dharmapuri.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.3624 of 2014
and M.P.No.1 of 2014

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srg 11/04/2022