BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.02.2021
CORAM:
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.1128 of 2017

Iffco-Tokio General Insurance Company Limited,
Represented by its Branch Manager,
having office at Chandra Gandhi Nagar,
82, Preetham Plaza,
Ground Floor and 1st Floor,
Ponmeni, Madurai Town and District : Appellant/2nd Respondent

Vs.

1.Mrs.M.Arumugham
2.Mr.Rajakumari
3.Mr.Kannan
4.Mr.Sundaramurthy @ Sundararajamurthy
5.Mr.Kasilingam
6.Mr.Thangaraj
7.Mrs.Krishnammal :R1 to R7/Petitioners
8.Mr.Sikandar Dulkaranai :R8/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 26.04.2017 made in MCOP No.153 of 2016 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.V.Sakthivel
For R1 to R7 : Mr.N.Tamil Mani
For 8th Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the award, dated 26.04.2017 made in MCOP No.153 of 2015 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

2.The short facts of the case is that on 09.12.2014, the deceased Malichamy went South Thamarakki Village for a festival and at about 7.45 pm when the deceased walked in front of one Baskaran house, a Lorry TN-69-a-3357 came in a rash and negligent manner and dashed against the deceased. In that process, the deceased sustained grievous injuries all over the body and died on the spot. The legal heirs of the deceased Malaichamy filed a claim petition seeking compensation of Rs.10,00,000/- on the ground that the driver of the Lorry was responsible for the accident.

3.The claimants have stated that at the time of accident, the deceased was 59 years and he was doing Agricultural work and Cow Broker and he was earring Rs.10,000/- per month.

4.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.6,17,500/- with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company is before this court as appellant.

6.Heard both sides and perused the materials available on record.

7.The dispute is with regard to liability. The learned counsel appearing for the appellant Insurance Company argued that the tribunal ought to have exonerated the appellant from the liability on the ground that the driver of the offending vehicle was under the intoxicating mode and thereby violated the policy condition and prays that the Civil Miscellaneous Appeal has to be allowed.

8.On the other hand, the learned counsel for the respondents 1 to 7/claimant submitted that the award is reasonable, which does not warrant any interference of this court.

9.The specific case of the appellant Insurance Company is that the driver of the offending vehicle was under the intoxicate mode on the date of the accident. The oral evidence of PW2 and Ex.P1(FIR), Ex.P3(MVI Report), Ex.P4 (Final Report) and Ex.P6 Rough sketch would show that the driver of the offending vehicle drove it in a drunken mood and caused the accident. The tribunal, even though accepting the case of the appellant Insurance Company holding that that the driver of the offending vehicle drove it in a drunken mood and negligently, failed to order pay and recovery theory.

10.It is settled law that the driving of the vehicle in a drunken mode amounts to violation of policy condition. In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has established before the Tribunal that the driver of the offending vehicle drove the offending vehicle in a drunken mood. It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recover the same from the owner the vehicle.

11.In view of that, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the entire award amount together with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimants are permitted to withdraw their respective share as per the apportionment of the tribunal, without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case** [***(2004)13 SCC 224]***. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Motor Accidents Claims Tribunal/
Chief Judicial Magistrate, Sivagangai.

Copy to:
The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.N.TAMIL MANI, Advocate (SR-4056[F] dated 09/02/2021)

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