IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2022
PRONOUNCED ON : 10.06.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.A.No.2667 of 2012
and
M.P.No.1 of 2012

The Branch Manager
United India Insurance Co.Ltd.
Branch Office
19/24, Junction Road,
Rajakalayana Mahal,
Salem-636 004

...Appellant / 2nd respondent.

Vs

1.Suganthi

2.Mahalakshmi

3.Ganesan

...Respondents 1 to 3 / Petitioners 1 to 3

4.Arumugam

5.P.Murugesan

6.Madalaimuthu

...Respondents 4 to 6 / Respondents 1, 3 and 4.

(6th Respondent exparte before Lower Court and hence notice may be dispensed with)

PRAYER : CMA filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.493 of 2005 dated 12.06.2008 on the file of Motor Accident Claims Tribunal, District Judge, Perambalur.

For Appellant : Mr.Mr.Rajadurai
for Mr.M.B.Gopalan Associates

For Respondents : Mr.V.Anand for R1 to R3

R6-Exparte
R5-No appearance

JUDGMENT

This appeal is filed by the appellant/insurance company mainly on the ground of liability. According to the appellant/insurance company, the tribunal has erroneously held that the insurance company is liable in a case where the deceased was a passenger in a goods vehicle who was neither required to be covered under Motor Vehicle Act nor covered under the Policy of the insurance.

2. The brief facts of the case is that on 23.02.2005 at about 7.00 p.m., while the deceased Duraisamy was travelling in a Mini Door Auto bearing Reg.No.TN 27 Q 7151 and proceeding from Veeranur to Thalaivasal Road, a mini lorry was coming in the opposite direction, to avoid the dash, the driver of the auto tried to turn rashly, the auto capsized and the deceased died on the way to Hospital. Claimants are the wife and children of the deceased and claimed Rs.5,00,000/- as compensation.

3. The manner of the accident is not disputed. The learned counsel for the appellant would state that the deceased Duraiswamy did not travel in the vehicle either as driver or as passenger at the time of accident. The learned counsel for the appellant/insurance company would further submit that the claim was contested by the Insurance company before the Tribunal by contending that the passengers travelling in the mini door auto is a violation of policy condition, therefore, the insurance company is not liable to pay any compensation.

4.The learned Judge [Tribunal] given a finding that one Gunasekaran, who was working as Assistant in the United India Insurance Company was examined as R.W.1 and he deposed that the vehicle bearing Reg.No.TN 27 Q 7151 was insured with the insurance company and the vehicle was sold to one Murugesan. According to him, the vehicle involved in the accident is a mini door auto and as per policy conditions, the vehicle is permitted to carry two persons and no passengers are allowed to travel. R.W.2 -Investigation Officer also in his evidence stated that he enquired the driver of the auto and that there were 14 passengers travelled in the vehicle; except the driver, others travelled as passengers at the time of accident. Investigation Report has been marked as Ex.R.4.

5. According to the claimant, there were only two persons who travelled in the vehicle. The driver was not examined to support the version of the investigating officer nor to state on

what capacity, the other person travelled in the vehicle. Admittedly, when the policy covers two persons, taking into consideration the evidence of P.W.2, Ex.P.1, Ex.P.4, Ex.P.5, the Tribunal given a finding that the accident took place due to the rash and negligent driving of the Mini door auto driver and therefore, awarded compensation to the claimants and therefore such a finding need not be interfered with.

6. As far as quantum of compensation is concerned, the tribunal awarded Rs.3,09,560/- as compensation to the claimants, which is not questioned by the appellant in this appeal. Hence, the quantum of compensation stands confirmed.

7. In respect of liability, the tribunal held that the accident took place due to rash and negligent driving of the mini door auto driver. The 1st respondent is the owner of the vehicle (4th respondent herein) and the 2nd respondent is the insurer/appellant herein. At the time of accident, the vehicle was not owned by the 1st respondent but was owned by 3rd and 4th respondents/5th and 6th respondent herein. Therefore the Tribunal gave a finding that 1st to 4th respondents are liable to pay the compensation jointly and severally.

8. The above findings of the Tribunal, fixing the liability on the respondents 1 to 4 [appellant & respondents 4, 5 and 6 respectively], jointly and severally needs no interference as the respondents before the tribunal failed to examine the auto driver. In such circumstances, the award of the Tribunal is confirmed. This appeal deserves to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance company is directed to deposit the entire award with interest and cost, if not already deposited. On such deposit, the claimants are entitled to withdraw their share as per the apportionment made by the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The District Judge,
   The Motor Accidents claims Tribunal,
   Perambalur.

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

C.M.A.No.2667 of 2012

PMK[co]
NSK/30/06/2022