IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : **12.09.2022**

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.653 of 2013
and
M.P.No.1 of 2013

ICICI Lombard General
Insurance Company Limited,
Salem. ...Appellant/2nd Respondent

Vs.

1.Velmurugan
2.Madhammal …1st and 3rd Respondents/Petitioners

3.K.Paramasivam …3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 05.03.2012 in M.C.O.P.No.168 of 2009 on the file of the learned Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.M.Selvam for R2

R1 and R3 – Served
No appearance

JUDGMENT

The 2nd respondent Insurance Company is the appellant herein filed the above appeal questioning the liability. The parties are referred to in the same rank and array as before the Tribunal.

2.The facts in brief are as follows:

The claimants who are the parents of one Rajkumar have filed M.C.O.P.No.168 of 2009 on the file of the learned Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri, claiming compensation for the death of their son in a road accident on 09.04.2008. It is their case that the said Rajkumar was aged about 17 years and he was assisting his father in running mobile tiffin centre and earning a sum of Rs.5,000/- per month. On 09.04.2008, he was engaged in loading and unloading the mud from the river. After loading the mud in a Tractor -cum- two wheeler tipping trailer, bearing Registration No.TN-29AA-3200, the deceased was seated in the Tractor and at about 01.00 pm, the driver has driven the tractor in a rash and negligent manner and on account of the same, the deceased fell down from the Trailer and left rear wheel of the trailer rolled over his head and he died on the spot. The claimants have sought for compensation of a sum of Rs.10 lakhs.

3.The 1st respondent had filed a counter denying their liability. The 2nd respondent/Insurance Company had filed their counter in which they have submitted that there is a violation of traffic rules as well as the policy conditions inasmuch as the deceased was seated in the Tractor which was a single seater only in which only the driver could sit. The First Information Report clearly states that the driver is sitting in the tractor. That apart, the Driver did not possess a driving licence and the deceased was an unauthorised passenger. They further contended that the deceased had not travelled for loading or unloading purpose. The 2nd respondent also contended that there was no additional premium paid for the trialor. Therefore, they would submit that they are entitled to compensate the petitioners.

4.The Tribunal relying upon the evidence of PW 2 and Ex.P.1 - First Information Report came to the conclusion that the accident had occurred on account of the negligent driving of the 1st respondent's driver. Further, the Tribunal observed that since the additional premium had been paid for the trailer the 2nd respondent is liable to compensate the petitioners. Ultimately, the Tribunal awarded a sum of Rs.5 lakhs as compensation to the petitioners. Challenging the same, the Insurance Company is before this Court.

5.A perusal of the First Information Report would show that at the time of the accident, the deceased was traveling in the tractor. Admittedly, the Tractor is a single seated in which only the driver could be seated. Therefore, the contention of the Insurance Company that the deceased was an unauthorised passenger stands proved. That apart, Ex.B.1 - Registration Certificate would also indicate the seating capacity of the tractor as one. The insurance policy further makes it very clear that the liability is limited to IMT 30 and it is only a driver who covered as per endorsement in IMT 28.

6.Considering the fact that the deceased was travelling in the Tractor and not in the trailer as stated in the FIR and even in Column 22 (III) (b), it has been stated that the deceased was travelling in the tractor, there is a clear violation of not only the policy conditions but further the policy does not cover the unauthorised passengers even with reference to the trailer. It is only persons are carried under the contract of employment who would be covered.

7.PW1 has also admitted that their son was travelling in the tractor. Therefore, on considering the above and in view of the violations of traffic rules as well as the policy conditions, the 2nd respondent is not liable to compensate the claimants.

In the result, this Civil Miscellaneous Appeal is allowed and the Award passed by the learned Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri, is set aside. It is stated that the Insurance Company has deposited the award amount, the same shall be refunded back to the appellant/Insurance Company. It is open to the Insurance Company to proceed against 3rd respondent/1st respondent to recover the amount if it is paid. No costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To
The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

P.T. ASHA, J,

mps

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