IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.805 of 2017
and
C.M.P.No.4162 of 2017

The Divisional Manager,
United India Insurance Co. Ltd.,
DO.No.13A, Nethaji Road,
Cuddalore – 607 001. ...Appellant/2nd Respondent

Vs.

1.Bakkiyalakshmi
2.P.Banupriya
3.T.Babu
4.S.Bharathi
5.N.Settu
6.Rukkumani ...Respondents/Petitioners
7.A.Rajendran ...Respondents/1st Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 25.02.2015 made in MCOP No.2800 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr.S.Arunkumar

For Respondents: Mrs.Ramya V.Rao for
Mr.T.Dharani for R1 to R6

Mr.A.Saravanan for R7

JUDGMENT
[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Cuddalore in MCOP No.2800 of 2014 dated 25.02.2015.

2.The case of the claimants before the Tribunal was that the husband of the first claimant, father of the claimants 2 to 4 and son of the claimants 5 and 6, namely, Thulasingam, aged about 45 years, died in the accident on 12.08.2014. According to them, on the faithful day, the deceased was walking from east to west along with another person on the extreme left side of the road at Pudupettai Bazaar, opposite to Wood shop of Ramamoorthy. At that time, a Tipper Lorry bearing Reg.No.TN-18-F-6999 which was owned by the 7th respondent and insured with the second respondent, came in a great speed and hit against the deceased. In the impact, he died on the spot. It is further case of the claimants that the deceased was working as Motor Operator in Thorapadi Town Panchayat and earning Rs.20,000/- per month. Since the accident had occurred due to the rash and negligent driving of the driver of the Tipper lorry, both the owner as well as the insurer of the lorry are liable to pay compensation of Rs.55,00,000/-.

3.In the counter filed by the owner of the Tipper Lorry/7th respondent herein, it has been stated that the vehicle was insured with the appellant and the policy number is 012382/31/02/00008658 and it was valid from 14.03.2014 to 13.03.2015.Since the policy was inforce at the time of accident, the Insurance Company is liable to pay entire award amount to the claimants.

4.The appellant filed counter disputing the allegation and averments made in the claim petition. It is also stated that the claim is excessive and exorbitant, hence, the claim petition is liable to be dismissed.

5.During the Trial, on behalf of the claimants, three witnesses gave evidence and marked 10 documents. The appellant did not examine any witness, but Ex.1 and Ex.3 were marked.

6.On appreciation of evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the Tipper Lorry and awarded compensation of Rs.29,09,060/- together with interest at the rate of 6% per annum. Challenging the said award, the present appeal has been filed.

7.Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company would submit that though the appellant was not able to demonstrate the policy mentioned in the counter, it is not relate to the offending vehicle viz., Tipper Lorry bearing Reg.No.TN-18-F-6999, but subsequently, on investigation, it was found out that the said policy was issued to the vehicle bearing Reg.No.TN-45-X-5396 owned by one Radhakrishnan. Since the appellant found that there was bogus claim and a fabricated document was produced before the Tribunal to fasten liability on the appellant, the application in CMP No.7353 of 2017 under Order 41 Rule 27 of C.P.C was filed to receive the additional documents. It is further stated that this Court, by order dated 04.12.2019, directed the Tribunal to receive the additional documents and evidence and render findings on those aspects. Since the Tribunal found that the policy produced by the insured was bogus, the appellant has to be exonerated from the liability in paying the compensation to the claimants.

8.Per contra, the learned counsel appearing for the 7th respondent Mr.T.Dharani would argue that the finding on genuiness of the policy was rendered by the Tribunal without considering the fact that the 7th respondent had already paid premium through the Agent and despite producing the original policy. It is the submission of the learned counsel that the burden is upon the insurance company to prove that what promoted it to issue second policy that too, commencing from 14.03.2014 to 13.03.2015, when the earlier policy itself expires only on 31.05.2014.

9.In this regard, we have heard the learned counsel appearing for the claimants Mrs.Ramya V.Rao.

10.We have carefully considered the submissions of the learned counsels appearing for the parties and perused the materials available on record.

11.In the instant case, the original petition was filed by the legal heirs of the deceased Thuasingam, who died in the accident on 12.08.2014. There is no dispute that the claimants are the legal heirs of the deceased. In the counter filed by the 7th respondent/insured, it has been clearly stated that the offending vehicle had coverage from 14.03.2014 to 13.03.2015 and the policy number was 012382/31/02/00008658. The said policy was marked as Ex.P.10. During the pendency of the appeal, as afore mentioned, the appellant had taken out the application to mark the additional documents and the said petition was allowed on 04.12.2019. Subsequently, a direction was issued to the Tribunal to render findings on the additional documents produced by the appellant. When the matter was remanded back to the Tribunal, additional evidence was given by the Insurance Company as R.W.1. He has categorically stated that for the vehicle owned by the 7th respondent bearing Reg.No.TN-18-F-6999 earlier policy, which was marked as Ex.R.1, was inforce from 01.06.2013 to 31.05.2014 and it was a package policy. The policy in dispute was taken for the period from 14.03.2014 to 13.05.2015 and the same was marked as Ex.P.10.

12. It is pertinent to note that the 7th respondent/insured did not choose to enter into the witness box to explain as to why he has taken the second policy before expiry of the earlier

policy. On the other hand, the appellant had produced premium Register to establish that the policy in dispute was in fact issued to one Radhakrishnan for the vehicle bearing Reg.TN-45-X-5396.

13.The contention of the learned counsel appearing for the 7th respondent that it is for the Insurance Company to explain why they have issued the policy before expiry of the earlier policy, cannot be countenanced for the simple reason that the onus lies on the insured. The Tribunal has rendered finding that the policy in dispute is the package policy. We accept the said finding. So, while confirming the quantum awarded in favour of the claimants, the liability fastened on the appellant is set aside and the appellant/Insurance Company is exonerated from its liability. The claimants can proceed against the owner of the Tipper Lorry bearing Reg.No.TN-18-F-6999 to recover the award amount.

14.In the light of the above finding, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

skn

To

1. The Motor Accident Claims Tribunal,
   Principal District Judge, Cuddalore.

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

+2ccs to M/s.Ramya V.Rao, Advocate, S.R.No.23798
+1cc to T.Dharani, Advocate, S.R.No.23189
+1cc to M/s.S.Arunkumar, Advocate, S.R.No.23889

C.M.A.No.805 of 2017
and
C.M.P.No.4162 of 2017

SR-II(CO)
RGA(02/06/2022)