



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2022**

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.523 of 2021

and

C.M.P(MD) .No.4830 of 2021

ICICI Lombard General Insurance Company Limited,
Through its Branch Manager,
Having its office at 2, 3rd Floor,
Chottabai Center,
Nungambakkam High Road,
Chennai-600 034.

:Appellant/Second respondent

.vs.

1.K.Raju
2.Pothumponnu
3.Kumareswari,
4.Minor.Thirukumaran
S/o.Raju
5.Minor.Manikakumar
S/o.Raju

:Respondets 1 to 5/Petitioners

(Minor 4th and 5th respondents represented through their Mother and Natural Guardian 2nd Respondent herein)

6.Yoga and Company
through its Managing Director,
Having its office at D.No.1/354-2,
Ramasamy Nagar,
Thirumalpuram Post,
Madurai-625 104.

: 6 th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to call for the records pertaining to the Fair and Decretal order passed by the Motor Accident Claims Tribunal Judge/Subordinate Judge, Aruppukottai in M.C.O.PNo.17 of 2016 dated 20.11.2020 and set aside the same by allowing the appeal.

For Appellant
For Respondent

: Mr.P.Pethu Rajesh
: Mr.S.J.Chakkaravarthy
For R1 to R5
No appearance for R6



JUDGMENT

This Civil Miscellaneous Appeal is filed by the ICICI Lombard General Insurance Company Limited, challenging, the judgment and decree passed in M.C.O.P.No.17 of 2016, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Aruppukottai.

2. The brief case of the respondents/claimants, is as follows:

(i) The deceased was aged 19 years on the date of the accident and was working as cleaner in the JCB owned by the first respondent before the Tribunal, which is insured with the second respondent. The claimants are parents and the siblings of the deceased.

(ii) On 22.09.2012, JCB bearing Registration No.TN-59-AP-7696 was levelling Suresh's land, in which, the deceased was travelling as a cleaner in the said JCB. By that time, suddenly, the JCB was overturned and the deceased fell down and the JCB ran over him. Hence, the deceased got grievous injuries and died on the spot. According to the respondents/claimants, the rash and negligent driving of the driver of the JCB was the cause of the accident, and that, since the said JCB belonged to the first respondent and the same is insured with the second respondent, they are jointly and severally liable to pay compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to them.

3.The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The ICICI LOMBORD General Assurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.15,90,800/- (Rupees Fifteen Lakhs Ninety Thousand and Eight Hundred only) together with interest at the rate of 7.5% per annum to the respondents/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the ICICI LOMBORD General Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Heard both sides and perused the materials available on records.

5. A perusal of Ex.R2/Policy copy clearly shows that there is no policy coverage for cleaner in the JCB and therefore, I have no hesitation to hold that the cleaner is not covered under the policy. Hence, the respondents/claimants are not entitled to claim compensation from the appellant/Insurance Company and the Insurance Company is exonerated from its liability to pay compensation to the respondents/claimants and the respondents/claimants shall recover the award amount from the owner of the vehicle.



In the result, this Civil Miscellaneous Appeal is allowed. No Costs. Consequently, the Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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08/06/2022

Sub Assistant Registrar(CS)

Tta

To

1.The Motor Accident Claims Tribunal Judge,
Subordinate Judge,
Aruppukottai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-14075[F] dated
24/03/2022)

+1 CC to M/s.S.J.CHAKKKARAVARTHY, Advocate (SR-14076[F] dated
24/03/2022)

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