IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.06.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2609 of 2012
and
M.P No.1 of 2012

The Branch Manager,
United India Insurance Co. Ltd.,
Branch Office
No.11-A, M.C Road
Ambur-635 802
Vellore District. .. Appellant

Vs

1.Kothandappa
2.Seethamma
3.Subramani
4.Kavitha
5.Suriya Bee
6.M.Krishnappa .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the award and decree dated 19.11.2011 in MCOP No.759 of 2007 on the of the Motor Accident Claims Tribunal (Principal District Judge) Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Mukund R.Pandiyan R1 to R4

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the award and decree dated 19.11.2011 made in MCOP No.759 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Krishnagiri.

2. The case of the appellant, in brief, is as follows:

On 07.07.2006 at 4.00, at Veppanapalli to Thimmsandiram Road, near one Basappa land, when the deceased was proceeding in a Tractor bearing Registration No.AP-26-H 0505 belonging to the 5th and 6th respondents herein and insured with the appellant/Insurance company, the driver of the said vehicle driven the same in a rash and negligent manner and suddenly applied brake and capsized the vehicle on the curve road, as a result of which the deceased was thrown out at a distance and sustained fatal injuries on his vital organs and died on the spot itself. Claiming compensation of Rs.15,00,000/-, the claimants filed a claim petition in MCOP No.759 of 2007 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal fixed the liability on both the Appellant/Insurance Company and the owner of the vehicle, who is the respondents 1 & 2 in MCOP No.759 of 2007 and directed the Insurance company to recover the same from the said respondents and a total compensation of Rs.4,52,000/- with interest at the rate of 6% per annum from the date of the petition till the date of deposit. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal failed to note that the 6th respondent has violated the policy conditions by permitting to use the vehicle other than agricultural purpose and to carry passengers in the Tractor. The Tribunal has also failed to appreciate Ex.A1, wherein PW2 has categorically mentioned that while returning after unloading manure, the alleged accident had occurred and in the Tractor except the driver no one is permitted to travel.

As per the judgment of this Court reported in **2002 ACJ 482,** unless trailer is also insured no liability arises. The Tribunal failed to appreciate the fact that Ex.B1 was issued only to cover the driver of the tractor. The 6th respondent had violated the law, permit and policy conditions by carrying person in addition to driver at the time of accident and hence, the appellant is not liable to pay the compensation without any additional premium being paid by the 6th respondent for such passenger. The learned counsel relied on the judgment of the Hon'ble Supreme Court reported in AIR 1999 SC 3252, 1999 I SCC 552 and the judgments of this Court reported in 1999 ACJ 1402, 1999 ACJ 235, 2003(3) SCC 339, 2008(1) TNMAC 20, 2008 ACJ 1741, 2008 ACJ 2144. The Tribunal has wrongly applied 16 multiplier without considering the age of the mother. Hence, the Insurance Company is not liable to pay compensation to the claimants and he prays to allow this appeal.

4. The learned counsel for the respondents 1 to 4/claimants has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not

require any interference in the hands of this Court. Hence, he prays for dismissal of the Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

7. A perusal of deposition of PW2 would reveal that the accident occurred due to the rash and negligent driving of the driver of the Tractor. FIR (Ex.A1) has also been registered against the driver of the Tractor. Hence perusal of Ex.A1 FIR clearly revealed that the accident has caused due to the rash and negligence driving of the driver of the Tractor. Placing reliance on those materials and evidence, the Tribunal came to a conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the vehicle belonging to the respondents 5 and 6 herein. Stating so, the Tribunal fixed the liability on both the Appellant/Insurance Company

and the owner of the vehicle, who are the respondents 5 and 6 herein, to pay the compensation of Rs.4,52,000/- to the claimants.

8. On perusal of records, it would reveal that the deceased had travelled in the Tractor as an unauthorised passenger. Admittedly, the offending insured vehicle/tractor is insured with this appellant and the same had been registered with seating capacity of only one, namely the driver and Ex.B1 Insurance policy reveals the same. As there was no seating capacity for the tractor, it is clearly a travel, which is unauthorized. The coverage under the policy is subject to policy terms and conditions. Since the deceased / unauthorised passenger is not covered under the policy, the appellant/insurance company is not liable to pay any compensation and therefore, this Court opines that it would be appropriate to exonerate the Insurance Company from the liability and fix the liability only against the fifth respondent herein / owner of the vehicle to pay the compensation to the claimants. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of liability alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

9. In the result,

(i) This Civil Miscellaneous Appeal is allowed. No costs.

(ii) The appellant/ Insurance Company is permitted to withdraw the amount already deposited, if any before the Tribunal.

(iii) The respondents 5 and 6 herein / owner of the vehicle is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP No.759 of 2007, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index : Yes/No
Speaking/Non speaking Order
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To

1.The Motor Accident Claims Tribunal/
The Principal District Judge, Krishnagiri.

2.The Section Officer,
VR Section, High Court, Madras.

A.A.NAKKIRAN., J.

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