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C.M.A.No.3515 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

C.M.A.No.3515 of 2013

&

M.P.No.1 of 2013

Branch Manager
United India Insurance Co. Ltd
M.M.Reddy Complex
Old Bangalore Road
Hosur

... Appellant

Vs.

1.Chandramma

2.Babu

3.Minor Archana
rep by her mother
Chandramma 1st respondent

4.Chandramma

5.R.Madeshkumar

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this Civil Miscellaneous Appeal, setting aside the Judgment and Decree dated 24.01.2013 passed in M.C.O.P.No.1336 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.



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For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Mukund R.Pandiyan for R1 to 4
No Appearance for R5

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J U D G M E N T

The above Civil Miscellaneous Appeal has been preferred by the insurance company, the 2nd respondent in M.C.O.P.No.1336 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri, aggrieved by the award dated 24.01.2013.

2. The brief facts of the case are as hereunder:

The respondents 1 to 4 as claimants filed M.C.O.P.No.1336 of 2010 seeking compensation to the tune of Rs.8,00,000/- for the death of the Venkatesappa @ Venkatesh, husband, father and son respectively of the claimants. It is the case of the claimants before the Tribunal that the deceased was driving the vehicle bearing registration No. TN-01-R-5870, taking with him his family members and that at about 11.50 hrs, on 18.03.2010, a cyclist suddenly crossed and in order to avoid a collision the



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deceased applied sudden brake, the vehicle capsized and the deceased sustained fatal injuries and he did not survive, though he was taken to the Government Hospital at Denkanikotta and subsequently to NIMHANS, Bangalore and Sparsh, Bangalore.

3. It is the case of the claimants that the deceased was carrying on business in vegetables and was earning about Rs.4,000/- per month and that he was aged 40 years at the time of demise. The deceased was the bread winner of the family and therefore the claimants sought for a consolidated sum of Rs.8,00,000/- as compensation.

4. The 2nd respondent insurance company, the appellant herein filed a counter denying the averments and the allegations made by the claimants in the MCOP petition. The main defence taken by the appellant before the Tribunal was that the deceased was the driver and also the owner of the vehicle and being the tort-feasor, he cannot claim compensation and ultimately sought for dismissal of the claim petition itself.



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5. Before the Tribunal, on the side of the claimants, the wife of the deceased was examined as P.W.1 and one Mr.Munichandra was examined as P.W.2. Exs.P1 to P6 were marked on the side of the claimants. On the side of the respondents, one Mr.Thambidurai was examined as R.W.1 and Mr.M.Ravi was examined as R.W.2 and exhibits R1 and R2 were marked on the side of the respondents.

6. The Tribunal, taking note of the evidence of R.W.2, held that the insurance company was liable to pay compensation for the death of Venkatesappa @ Venkatesh. Further, the Tribunal proceeded to fix a sum of Rs.3,300/- as the monthly income of the deceased and adopted a multiplier of 15 taking his age as 40 and added compensation under other heads and arrived at a total compensation of Rs.4,51,898/- to be paid by the respondents, together with interest at 7.5% per annum.

7. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant insurance company and Mr.Mukund R.Pandiyan, learned counsel appearing for the respondents 1 to 4.



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8. The only argument put forth by the counsel for the appellant is that the deceased was the owner of the vehicle that capsized and he was also driving the vehicle and consequently U/s. 163 (A) of the Motor Vehicles Act, 1988, being the tort-feasor, the insurance company cannot be called upon to compensate the claimants. In support of his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in the case of ***Ram Khiladi and another Vs. United India Insurance Co. Ltd and another***, reported in ***2020 ACJ 627***, to support his argument with regard to liability of the insurance company when a third party was not involved and being an “act only” policy the accident cannot be said to be covered under the policy and no liability can be fastened on the insurance company.

9. The counsel for the respondents 1 to 4, however, on the contrary, submitted that the Tribunal had rightly appreciated the oral and documentary evidence available before it and importantly took note of the vital admissions of the witness examined on behalf of the appellant as



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R.W.2 and therefore justified the award and prayed for dismissal of the

Civil Miscellaneous Appeal.

10. The only point that needs to be decided by this Court is as to whether the policy in question covers the case of this nature viz., the owner/driver himself being the tort-feasor and whether in such case, he/his legal representatives can be entitled to claim compensation from the insurer.

11. This Court has perused the original records. Ex.P4-policy of insurance is issued in the name of one Mr.R.Madesh Kumar. The said Madesh Kumar, the 5th respondent herein and 1st respondent before the Tribunal is admittedly the person from whom the deceased purchased the vehicle. It has also come out in evidence that subsequently the transfer has also been effected in the name of the deceased in 2009, which is admitted to even by the appellant.

12. On a perusal of Ex.P4, it is seen that in the schedule of premium column, apart from the basic premium of Rs.670/-, an additional sum of



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Rs.100/- has been paid towards “Compulsory PA to Owner-Driver Amount Rs.2,00,000/-”. The accident occurred on 18.03.2010 during which time admittedly the Ex.P4 policy was in force. Ex.P4 also contains a note indicating “Personal Accident cover for Owner-Driver CS Rs. 2,00,000/-”.

13. This clearly indicates that it is not a mere “act policy” and a separate premium has been paid for personal accident cover in respect of which the maximum compensation payable is Rs.2,00,000/-. Surprisingly on behalf of the appellant, Ex.R2, a certificate of insurance in respect of vehicle bearing registration No. TN-01-R-5870 has been filed. It is also in the name of the erstwhile owner R.Madesh Kumar only. The said Ex.R2 has the same policy number which is mentioned in Ex.P4. The vehicle number alone is different. Relying on Ex.R2, the counsel for the appellant contended that it is clearly mentioned “liability only” and therefore contended that the insurance company cannot be held liable to pay any money to the claimants. This Court has carefully perused Exs.P4 and Ex.R2. The policy number, period of insurance and also name of the registered owner are all one and the same. However, in Ex.P4 the vehicle number is



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mentioned as TN-01-R-3870, whereas in Ex.R2 it is mentioned as TN-01-R-

5870. Ex.R2 does not contain the policy and it is only the certificate of insurance. There is no mention of the insurance premium paid in Ex.R2. On the contrary, Ex.P4 contains the certificate of insurance and also the policy and schedule. As already discussed in Ex.P4, the schedule of premium covers “Personal Accident for Owner-Driver CS to the tune of Rs.2,00,000/-”. In this context, evidence of R.W.2 Mr.M.Ravi who has been examined on behalf of the appellant assumes relevance. R.W.2 has categorically admitted to the fact that a sum of Rs.100/-has been paid in addition to the basic premium of Rs.670/-. This corroborates only to Ex.P4 and not to Ex.R2. This Court, therefore has no hesitation to hold that Ex.P4 is the proper certificate of insurance enclosing the policy and relevant schedule for ascertaining the liability of the insurance company. Ex.R2, as already discussed does not even mention the correct vehicle number and apart from the certificate, the appellant has not produced the policy and schedule to the policy. This Court, therefore has to necessarily infer from the available documentary evidence and considering the oral evidence of R.W.2, the appellant is liable to compensate the claimants in the case of



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fatal accident to the owner/driver. In the instant case, admittedly the owner of the vehicle the deceased Mr.Venkatesappa @ Venkatesh was driving the vehicle and no other vehicle was involved in the accident. Taking into account that the deceased had paid a separate premium for personal accident cover, the insurance company cannot wriggle out of its liability. Infact, the Tribunal has rightly considered the evidence available on record viz., Ex.P4 and also evidence of R.W.2 in coming to the conclusion that the insurance company was indeed liable to pay compensation in this matter.

14. This Court however finds that when the schedule clearly limits the liability of the insurance company to a sum of Rs.2,00,000/ in cases of personal accident to the owner/driver, no further sum could be awarded by way of compensation to the claimants. In this regard, the Tribunal has committed an error in awarding a sum of Rs.4,51,898/- and necessarily, this Court has to interfere.

15. As discussed above, the insurance company is liable to pay only a sum of Rs.2,00,000/- and nothing more to the claimants. It is also seen from



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the records that in and by an interim order dated 17.12.2013, the appellant was directed to deposit a sum of Rs.2,00,000/- within a period of four weeks. If the appellant has already complied with the said order, no further amount needs to be deposited by the appellant. However, in the event of the appellant not having deposited the said amount of Rs.2,00,000/-, then the appellant shall deposit the same within a period of four weeks from the date of receipt of a copy of this order and the respondents 1 to 4 shall be at liberty to take out appropriate application for payment out, following the due process contemplated under law.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

Index : yes
Internet : yes
Neutral Citation: Yes
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To
1.The Motor Accidents Claims Tribunal,
Principal District Judge, Krishnagiri.



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

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P.B.BALAJI.,J.

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