



CMA.No.1801 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No. 1801 of 2018
CMP.No.13876 of 2018

Tata AIG General Insurance Company Limited
Coimbatore 641 018

Appellant

Vs

1. Jothilakshmi
2. Minor G.Vibin Krishna
3. Minor Sharumathikrishna
4. Rajammal
5. R.Murugan
6. Jothimani

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 27.02.2017, made in MCOP.No.58 of 2012, by the Subordinate Court (MACT) Udumalpet.

For Appellant : Mr.E. Rajadurai for M/s.M.B.Gopalan Associates

For Respondents : Mr.G.Vinoth-RR1 to 4

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 27.02.2017, made in MCOP. No.58 of 2012, by the Subordinate Court (MACT) Udumalpet.
2. The Respondents 1 to 4/claimants, who are wife, son, daughter and mother of the deceased, namely, N. Gopal, has filed the claim petition before the Tribunal, seeking a compensation of Rs.58,80,000/- on various heads, for



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the death of the deceased, who died in a motor road accident, which took place on 14.08.2011. The 5th Respondent/ driver of the offending vehicle and the 6th Respondent/ owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. On the side of the claimants, PW.1 was examined and Ex.P1 to Ex.P7 were marked. On the side of the Insurance Company, DW.1 and DW.2 were examined and Ex.R1 to R11 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs. 14,00,000/- (Rupees fourteen lakhs only) with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company. Aggrieved by the same, this appeal has been filed by the Insurance Company.
4. This Court heard the learned counsel on either side.
5. Though the learned counsel for the appellant has raised several arguments, he has confined his argument to the extent that it would be suffice if this Court grants pay and recovery rights to the Appellant Insurance Company, since the Insurance Company pertaining to the vehicle in question was cancelled as per the letter dated 25.06.2011.
6. According to the Appellant Insurance Company, the insurance policy relating to the vehicle in question was cancelled by them. The 6th Respondent/ owner of the offending vehicle did not contest the case and remained



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exparte. Hence, the Tribunal ought to have considered the same and granted pay and recovery rights to the Appellant. But, the Tribunal failed to do so. Hence, the Appellant Insurance Company is entitled for pay and recovery rights.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed, granting pay and recovery rights to the Appellant/ Insurance Company, while confirming the impugned award of compensation, as ordered by the Tribunal, in so far as the quantum and apportionment are concerned. The impugned judgement and decree, in so far as the direction to the Appellant Insurance Company to pay the compensation is concerned, is modified to the effect that the Appellant Insurance Company shall deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1 and 4 are entitled to withdraw their respective compensation with proportionate interest, as ordered and apportioned by the Tribunal, by filing proper application. After making such deposit, the Appellant/ Insurance Company is at liberty to recover the same from the 6th Respondent/ owner of the offending vehicle, by following the due procedures contemplated under law. No costs. Consequently, the connected CMP is closed.

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Index:Yes/No
Web:Yes/No



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Speaking/Non Speaking Srcm

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A.A.NAKKIRAN, J.

Srcm

To

1. The Subordinate Court (MACT) Udumalpet.
2. The Record Keeper, VR Section, High Court, Madras

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