IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1803 of 2018 and
C.M.P.No.13888 of 2018

The Oriental Insurance Co. Ltd.,
Represented by its Branch Manager,
No.3-L, Siddhaveerappa Chetty Street,
Dharmapuri Town,
Dharmapuri Taluk – 636 701. ...Appellant

Vs.

1. Thenmozhi
2. V.Karuppannan ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 31.10.2017 made in M.C.O.P.No.786 of 2016 passed by the Motor Accident Claims Tribunal/Special District Judge, Dharmapuri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.A.Ilayaperumal for R1
R2 - No Appearance

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JUDGMENT

This appeal is filed challenging the fair and decreetal order dated 31.10.2017 made in M.C.O.P.No.786 of 2016 passed by the Motor Accident Claims Tribunal/Special District Judge, Dharmapuri.

2 The appellant is the Insurance Company, 1st respondent is claimant and 2nd respondent is owner of the offending vehicle. The first respondent/claimant filed claim petition in M.C.O.P.No.786 of 2016 claiming compensation of Rs.10,00,000/- stating that on 17.12.2013 at about 8.00 a.m., when their daughter viz. Megala, 5 years, was traveling in a Lorry from her village to Hosur, the Driver of the Lorry, driven the vehicle in a rash and negligent manner and dashed against a Coconut Tree and the vehicle fell into Well, due to which, she sustained grievous injuries and succumbed to the injuries.

3 The claim petition was not contested by the second respondent owner of the offending vehicle and he remained ex-parte before the Tribunal. The claim petition was contested by the appellant/Insurance company and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, on the side of the first respondent/claimant P.Ws.1 & 2 were examined and Exs.P1 to P11 were marked. On the side of the appellant/Insurance Company, R.W.1 and R.W.2 were examined and Exs.R1 to R3 were marked.

5 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the owner of the offending vehicle and awarded a sum of Rs.5,00,000/- as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount and since there was violation of policy condition, ordered for pay and recovery from the second respondent/owner of the vehicle. Not being satisfied with the compensation ordered by the Tribunal and aggrieved in directing the appellant/Insurance Company to pay the award amount, the Insurance Company has filed the present appeal.

6 Learned counsel appearing for the appellant/Insurance Company would submit that father of the deceased has given complaint stating that owner of the Lorry, in which he and his daughter were traveling, driven the vehicle in a rash and negligent manner and dashed against the coconut tree and the vehicle fell into the well, in which, his daughter sustained grievous injuries and succumbed to the injuries. But, after investigation the police has filed charge sheet stating that the father of the deceased only driven the Lorry at the time of accident. But, the father of the deceased, who is an eye witness, has not been impleaded in the claim petition and he set up his wife viz. the claimant and field the claim petition and he did not even come into witness box. P.W.2, who is said to have been the eye witness to the occurrence, has clearly deposed that the father of the deceased only driven the Lorry. Further the father of the deceased, who driven the Lorry did not posses valid Driving License at the time of accident.

6.1 He would further submit that the deceased was 5 years old child and she has no reason to travel in the Lorry and therefore the policy does not cover the deceased. Hence the appellant is not liable to pay the compensation.

The Tribunal even though accepted the charge sheet filed by the Investigating Agency and made finding that the father of the deceased only was driving the Lorry, but, fixed liability on the owner of the vehicle and directed the appellant/Insurance Company to pay the compensation and ordered pay and recovery, which is erroneous.

7 Learned counsel appearing for the first respondent/claimant would submit that the deceased was only five years old at the time of accident, who was traveling in the Lorry and the Driver of the Lorry caused accident, in which, the deceased sustained grievous injuries and succumbed to the injuries. The Tribunal has rightly appreciated the evidence and directed the appellant/Insurance Company to pay the compensation and has also rightly ordered pay and recovery, which does not call for any interference.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 Admittedly the deceased, who was occupying in the Lorry was only 5 years old at the time of accident. The accident took place on 17.12.2013 and father of the deceased given complaint stating that he and his daughter were traveling in the Lorry from their Village to Hosur ant the Driver of the

Lorry driven the vehicle in a rash and negligent manner and caused accident, due to which his daughter sustained grievous injuries and succumbed to the injuries. But, investigation revealed that father of the deceased only was driving the Lorry. P.W.1 is the mother of the deceased, who is not an eye witness and in order to prove the accident P.W.2 was examined by the claimants, who has also categorically stated that at the time of accident, one Durai was driving the Lorry, who is none other than the father of the deceased.

10 Further the offending vehicle is only a goods vehicle, which is not meant for carrying any passengers other than owner of the goods and cleaner of the vehicle. The deceased was only 5 years old child, who does not cover under the policy. The offending vehicle is not a passengers vehicle and it is only goods vehicle and there is no reason for the 5 years old child to travel in the goods vehicle. Hence the deceased was unauthorised passenger, who does not cover the policy. Further there is no contra evidence to disprove the charge sheet filed by the investigating agency, which states that the father of the deceased only was driving the vehicle. Under these circumstances finding of the Tribunal is erroneous.

11 Therefore findings of the Tribunal regarding fixing the liability on the appellant/Insurance Company is set aside. The second respondent/owner of the vehicle is liable to pay the compensation awarded by the Tribunal. The appellant/Insurance company is at liberty to withdraw the amount, already deposited, if any.

12 With the above modification, the Civil Miscellaneous Appeal is allowed. Consequently connected miscellaneous petition is also closed. No cost.

12.09.2023

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Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal/
   Special District Judge, Dharmapuri.

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

P.VELMURUGAN. J.,

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