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C.M.A.No.183 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.183 of 2018

and

C.M.P.No.2197 of 2018

United India Insurance Co.Ltd,
Represented by Branch Manager,
No.6/659, Trichy Road,
Ramanathapuram,
Coimbatore – 641 045.

... Appellant

Vs.

1. Muthupandi
2. Subbulakshmi
3. P.Kuppusamy
Respondents

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the award and decree dated 18.01.2017 made in M.C.O.P.No.1062 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For R1 and R2 : M/s..MA.P.Thangavel

For R3 : Notice served



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No appearance
J U D G E M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/second respondent Insurance Company against the award and decree dated 18.01.2017 passed in M.C.O.P.No.1061 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tiruppur.

2. The case of the claimants is that the accident had taken place on 21.04.2014 at about 1730 hours. While the deceased Raja was going by TATA ACE bearing registration No.TN23BP9789 towards West to East to Avinahsi NI 47 service road near TCI Petrol Bunk, Karumathampatti, at that time the lorry bearing registration No.TCC-2099 driven by the lorry driver under the third respondent herein, parked the lorry without any signal in the East-West road facing East in the right hand side without adhering any traffic rules and regulations, dashed against the deceased Raja and due to which, the accident had occurred.

3. The main contention of the learned counsel for the appellant/Insurance company is that the Tribunal has failed to note that

F.I.R was lodged against the deceased driver of TATA ACE vehicle.



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Further the Tribunal has fixed the liability only on the appellant/Insurance Company. The claimants have also failed to implead the owner and insurer of TATA ACE vehicle which was driven by the deceased Raja. The learned counsel for the appellant/Insurance Company vehemently contented that the accident has occurred due to sole negligence on the part of the deceased driver of TATA ACE vehicle. He would further submit that without impleading the owner and insurer of the said TATA ACE vehicle, the claim petition is not maintainable.

4. Considering the facts and circumstances of this case, this Court finds that the non-joinder of TATA ACE vehicle's owner cum Insurance Company are fatal to the case of the prosecution. Hence, the order dated 18.01.2017 passed in M.C.O.P.No.1061 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tiruppur is set aside. The matter is remitted back to the Tribunal and further, the Tribunal is directed to proceed the claim application filed by the claimants therein by directing the claimants or *suo motu* implead the owner and insurer of TATA ACE vehicle, by issuing notice to them and dispose of the claim petition in accordance with law within a period of two months from the date of receipt of copy of this order.



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5. With the abovesaid direction, the Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed.

No Costs.

17.07.2023

mfa

To

The I Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruppur.



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P.VELMURUGAN, J.

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