IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.427 of 2018
and
C.M.P.No.3770 of 2018
&
Cross Objection No.38 of 2023

M/s.United India Insurance Co.Ltd.,
Divisional Office-1,
107, Peramanur Main Road,
Salem -636 007. ... Appellant

Vs.

1. Vahidha Begam

2. Mahabooba Begum

3. Masuk Elahe

4. Rasheed Ahamed

5. Minor.Mahboob Ali
   Represented by next friend mother
   and guardian Vahidha Begum

6. Abdul Jabbar

7. K.Arumugam

8. H.Nazab John ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 to set aside the decree and judgment dated 23.08.2016 passed in M.C.O.P.No.638 of 2013 on the file of the Motor Accident Claims Tribunal, (Special District Judge, Salem.

For Appellant	: Mr.C.Paranthaman
For R1 to R6	: Mr.S.P.Yuvaraj
R7	: Left
R8	: Notice Served No appearance

Cross Objection No.38 of 2023

1. Vahidha Begam

2. Mahabooba Begam

3. Masuk Elahe

4. Rasheed Ahamed

5. Minor.Mahboob Ali
   [Represeted by NF/Mother
   1st Petitioner Vahidha Begum]

6. Abdul Jabbar .... Appellant

Vs.

1. M/s. United India Insurance Company Limited,
   Divisional Office-1,
   No.107, Peramanur Main Road,
   Salem – 636 007.

2. K.Arumugam

3. H.Nawab John ... Respondents

PRAYER: Cross Objection filed under Order 41 Rule 22 of C.P.C., to set aside the order made in M.C.O.P.No.638 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Salem, dated 23.08.2016.

J U D G E M E N T

The Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the Award dated 23.08.2016 passed in M.C.O.P.No.638 of 2013 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Salem.

2. Appellant is the Insurance Company. The respondents 1 to 6 are the claimants who filed the claim petition in M.C.O.P.No.638 of 2013 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Salem. The Tribunal, after considering the materials and also finding that there was violation of policy condition and awarded compensation. Challenging the findings of the Tribunal with regard to

pay and recovery, the Insurance Company has filed the Civil Miscellaneous Appeal. The claimants have filed the Cross Objection, challenging the quantum of compensation.

3. Learned counsel for the Insurance Company submitted that the seating capacity of the insured vehicle bearing Registration No.TN-38 V 7779 Maruthi Omni Van is only “5”. Five persons alone were permitted to travel in the said van. At the time of accident, 11 persons have travelled in the van, which is violation of the policy condition. Insurance policy is covered only for five persons. If any person had travelled in the insured vehicle more than the seating capacity, then the insurance company is not liable to pay the compensation, instead, the owner is liable to pay the compensation to the other persons who travelled in the van. The Tribunal failed to consider that at the time of accident, owner of the insured vehicle failed to follow the policy condition. As per Ex.R2-RC book, the vehicle's seating capacity is only “5” and hence, the Ex.R1-Insurance Policy covered only for five persons. Quantum of compensation awarded by the Tribunal is against the principles of law.

The Tribunal failed to consider that there are 11 persons who were travelling in the van at the time of accident, which is against the policy conditions. The Tribunal, instead of directing the 7 and 8 respondents herein to pay the compensation, directed the appellant/Insurance Company to pay the award amount at the first instance and then recover the same from them.

4. Learned counsel for the respondents/cross objectors submitted that the Tribunal has given a finding that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle and at the time of accident, the said van was insured with the appellant and the policy was in force and hence, the Insurer is not liable to pay the compensation. But, the Tribunal erroneously directed the Insurance company to recover the award amount after paying the same to the claimants. The cross objectors proved that the deceased was earning Rs.15,000/- per month, but the Tribunal fixed only Rs.10,000/- as the monthly income of the deceased. No future prospects have been added by the Tribunal. The Tribunal awarded very meagre amount under the

head "love and affection. Thus, compensation awarded by the Tribunal does not reflect the "just" compensation. Hence, they seek for enhancement of the compensation.

5. While the deceased was travelling in a Van, bearing Registration No.TN-38 V 7779 on 22.10.2009, he met with an accident. Hence, a case was registered in CrimNo.441 of 2009 for the offences under Sections 279 and 304(A) IPC against the driver of the van. One of the claimants was examined as P.W.1. Copy of F.I.R, Post-mortem certificate, Educational certificate of wife and children were marked. She has clearly stated that at the time of accident, along with the deceased, 10 other persons travelled in the vehicle. There is no material to show that the accident had occurred only due to accommodation of more passengers. As far as the insurance company is concerned, the seating capacity is only five persons. At the time of accident, 11 persons were travelling in the van. P.W.2, who is the eye witness, has stated that the accident had occurred only due to rash and negligent driving of the driver of the Omni van. At the time of accident, the said vehicle was

insured with the appellant/Insurance Company. The Tribunal also found that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle, which was insured with the appellant and hence, the appellant is liable to pay the compensation. However, the materials on record show that permitted seating capacity is only "five persons". The Insurance policy is also covered only for "five persons". At the time of accident, more than five passengers were travelling in the vehicle. Therefore, the Tribunal found that owner cum driver allowed more number of persons to travel in the vehicle. It is a clear violation of policy. Hence the Tribunal ordered pay and recovery. This Court finds that there is no perversity in the Award passed by the Tribunal.

6. As far as the quantum of compensation is concerned, at the time of accident, the age of the deceased was 45 years. The Tribunal has fixed the notional income of the deceased at Rs.6,000/-.

7. Learned counsel appearing for the Cross Objectors submitted that the quantum awarded by the Tribunal, does not reflect the "just"

compensation. However, considering the age of the deceased, proper multiplier was applied and considering the number of dependants, ¼ of personal expenses was deducted. Proper multiplier method was also applied. There is no perversity in the Award passed by the Tribunal. Due to violation of policy, the Tribunal has ordered “pay and recovery”.

8. Considering the facts and circumstances of the case, this Court finds that there is no infirmity in appreciation of evidence and awarded quantum of compensation and ordered pay and recovery. There is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. Cross objection is also dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

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

To

The Motor Accident Claims Tribunal,
Special District Judge,
Salem.

P.VELMURUGAN, J.

mfa

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