IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.617 of 2018
and
C.M.P.No.5437 of 2018

M/s.SBI General Insurance Company Limited,
Natraj, No.101, 102,
Junction of Western Express Highway &
Andheri-Kurla Road,Andheri (East),
Mumbai – 400 069,India. ... Appellant

Vs.

1. Govindasamy

2. Janatha

3. Govindaraj ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree in M.C.O.P.No.69 of 2013, dated 10.01.2017 on the file of the Motor Claims Tribunal, Subordinate Court, Vaniyambadi.

For Appellant : M/s.C.Harini for
M/s.M.B.Gopalan Associates

For R1 & R2 : M/s.A.Subadra

R3 :Remained Exparte before the Tribunal

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the award dated 10.01.2017 passed in M.C.O.P.No.69 of 2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Vaniyambadi.

2. Learned counsel for the appellant/Insurance Company submitted that the third respondent has obtained insurance policy to his Tractor- trailer covering the risk of driver alone in respect of the said vehicle and there is no Insurance coverage regarding risk of any other employees/Collies of the third respondent, including the deceased who travelled in the said Tractor-Trailer at the time of the alleged accident. The Tribunal failed to consider the abovesaid aspect and granted compensation to the respondents 1 and 2 herein/claimants. Hence, the appellant/Insurance Company is not liable to pay any compensation to the claimants and the impugned award passed by the Tribunal is liable to be set aside.

3. Per contra, the learned counsel for the respondents 1 & 2 /claimants submitted that the claimants are father and mother of the deceased. The deceased was working as a load man in the Tractor belonging to the third respondent. On 29.01.2013 at about 12.35 pm, the accident had occurred. The Tractor bearing Registration No.TN-24 D 7536 belonging to the third respondent herein, was driven by its driver in the course of his employment in a rash and negligent manner and caused the accident. The vehicle involved in the accident is a commercial vehicle and it is used for loading and unloading bricks. She further submitted that R.W.1 witness of the appellant/Insurance Company side clearly admitted that the "policy" is a "package policy". She further submitted that the driver of the Tractor, was not possessing a valid licence. The Tribunal has rightly considered the counter affidavit filed by the appellant/Insurance company and also taking note of the evidence adduced on the side of the appellant, fixed the liability on the appellant and the third respondent herein. There is no perversity in the impugned Award passed by the Tribunal and the same is liable to be dismissed.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

5. Admittedly the deceased was travelling in the offending vehicle belonging to the third respondent herein and the said vehicle was insured with the appellant herein. The deceased was working as a load man in the Tractor belonging to the third respondent. On 29.01.2013 at about 12.35 pm, the Tractor belonging to the third respondent herein was driven by its driver in a rash and negligent manner, had caused the accident, due to which, the deceased who travelled in the Tractor as a Coolie, fell down from the Tractor and sustained injuries and in spite of taken treatment in the Government Hospital, he died. Hence, the legal representatives of the deceased filed the claim petition before the Tribunal and the Tribunal has also considered all the facts namely the source of income, dependency etc., and awarded compensation as per the guidelines of the Hon'ble Supreme Court.

6.This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company only as against the liability. Learned counsel for the appellant/Insurance Company has submitted that the policy taken by the third respondent is under the coverage regarding risk of the driver of the Tractor alone and not for the risk of any other employee/Collie who would travel in the vehicle. Hence, the appellant/Insurance company is not liable to pay the compensation.

7.The manner of accident is not in dispute. The deceased was travelling in the offending vehicle at the time of accident is also not dispute. The only dispute raised by the appellant/Insurance Company is that the Coolie workers were not covered under the "policy" in respect of the Tractor. R.W.1 has admitted in his cross examination that the "policy" is a "package policy" and the Tractor is a commercial vehicle, which is used for loading and unloading of bricks. The policy issued by the appellant/Insurance Company to the third respondent/owner of the offending vehicle, is a "package policy" and the Coolie workers who travelled in the Tractor for loading and unloading of bricks, are also covered under the said policy.

8. Based on the admission made by the witness of the appellant/Insurance Company and also taking into consideration the evidence of the appellant/Insurance Company, the Tribunal has rightly fixed the liability on the appellant/Insurance company and the third respondent herein.

9. This Court does not find any perversity in the findings of the Tribunal and there is no merit in the appeal and the same is liable to be dismissed. Accordingly, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

mfa

To

The Subordinate Judge,
Motor Claims Tribunal,
Subordinate Court,
Vaniyambadi.

P.VELMURUGAN, J.

mfa

C.M.A.No.617 of 2018
and
C.M.P.No.5437 of 2018

20.07.2023