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C.M.A.No.685 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.685 of 2021
and C.M.P.No.4148 of 2021

The Divisional Manager,
The United India Insurance Co. Ltd.,
D.O.No.13A, Nethaji Road,
Cuddalore – 607 001.

... Appellant

Vs.

1.Kasthuri
2.J.Sivapriya
3.J.Revasthi
4.J.Ishwarya Sarumathi
5.Sankar

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.4133 of 2014 on 31.10.2018 on the file of the learned Motor Accident Claims Tribunal, (Principal District Judge), Cuddalore.

For Appellant : Mr.J.Chandran

For Respondents : Mr.N.Ganeshmurthy [R1 to R4]
No appearance [R5]



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JUDGEMENT

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Aggrieved by the award passed by the Motor Accidents Claims Tribunal, (Principal District Judge), Cuddalore, the appellant/Insurance Company has preferred the present appeal.

2. The claimants have filed the claim petition stating that, on 11.06.2014 at about 13.30 hours, when the deceased Venkatesh was proceeding in the TVS XL Super Moped bearing Regn.No.TN-32-M-4137 at a moderate speed, the first respondent's TVS XL Super Moped bearing Regn.No.TN-19-W-8884, insured with the second respondent/insurance company, driven by its driver in a rash and negligent manner and dashed against the deceased, thereby, the deceased sustained fatal injuries all over his body and admitted in the hospital. Inspite of the treatment given by the doctors, the deceased died in the hospital. Thereafter, the claimants have filed a claim petition claiming a sum of Rs.25,00,000/- for the death of the deceased.

3. Before the Tribunal, the claimants have examined two witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the



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side of the respondents, the respondents have examined one witness viz., R.W.1 and marked 3 documents viz., Ex.R.1 to Ex.R.3. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.17,00,000/- as compensation to the claimants by ordering pay and recovery. Questioning the liability, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, in the claim petition, the insurance company has filed counter affidavit, in which they have not admitted the involvement of the vehicle bearing Regn.No.TN-19-W-8884, which was insured with the appellant at the material point of time. Unless the necessary particulars regarding the insurance policy disclosed by the claimants and cause notice to the owner to produce the insurance policy, it is presumed that the appellant is not liable to compensate the claimants. As per Ex.P.3/M.V.I. Report, the registration number is mentioned as TN-19-W-8884, whereas the chassis No.MD621BD12DID43988 and in Column No.10, it is mentioned as United India Insurance Company, Tindivanam and the Policy No.102357860. However, the insurance policy was not marked



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before the Tribunal. By relying on the insurance policy, he has submitted that the chassis number mentioned in the insurance policy is different from the one mentioned in the Ex.P.1/M.V.I. Report. Therefore, he prays that this Court may mark the insurance policy as exhibit and remand the matter to the Tribunal by setting aside the award for fresh adjudication.

5. The learned counsel appearing for the respondents 1 to 4 submitted that he has no serious objection for remitting the matter to the Tribunal for fresh adjudication and this Court may fix a time period for the disposal of the claim petition.

6. In view of the above, this Court marks the insurance policy No.0124D63113P102357860 issued by the United India Insurance Company Ltd., as Ex.C.1. Further, this Court, without going into the merits of the case, sets aside the impugned award passed by the Motor Accidents Claims Tribunal, (Principal District Judge) Cuddalore in M.C.O.P.No.4133 of 2014 dated 31.10.2018 and remands the matter to the Tribunal to decide the case on merits and in accordance with law, by considering the above insurance policy marked



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by this Court also, within a period of three (3) months from the date of receipt of a copy of this judgment, after providing opportunities to all the respective parties. Further, the parties are permitted to adduce fresh evidence with regard to the policy of the vehicle, which was involved in the accident.

7. With the above directions, the Civil Miscellaneous Appeal is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

21.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

1.The Motor Accidents Claims Tribunal, (Principal District Judge), Cuddalore.

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



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M.DHANDAPANI,J.,

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