



C.M.A.No.3304 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3304 of 2014

and

M.P.No.1 of 2014

M/s.TATA AIG General Insurance Co.Ltd.,
“Jaya Enclave”, 3rd Floor,
No.1057, Avinashi Road,
Coimbatore – 641 018.

... Appellant

Vs.

1. K.Govindasamy (Died)
2. P.Vengatesan
3. M/s.ICICI Lombard General Insurance Co.Ltd.
Zenith House, Keshavarao Khade Marg,
Mahalaxmi, Mumbai – 400 034.
4. Shanmugadai
5. Maraghadam
6. Mahalakshmi
7. Sudha

... Respondents

*(Respondent – 1 died, Respondents 4 to 7 are brought on record as
Lrs of the deceased R-1 viz.K.Govindasamy vide order dated 06.10.2023
in C.M.A.No.3304 of 2014)*

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.815 of 2009, dated 22.11.2011 on the file of the Motor Accidents Claims



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Tribunal, Additional District & Sessions Court, Fast Track Court No.5,
Coimbatore at Tiruppur.

For Appellant : Mr.E.Rajadurai for
N.Vijayaraghavan

For Respondents : Died [R1]
No Appearance [R2]
Mrs.R/Sreevidhya [R3]
Mr.R.Prabakar [R4 to R7]

JUDGEMENT

This appeal has been filed against the Judgment and Decree in M.C.O.P.No.815 of 2009, dated 22.11.2011 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Court, Fast Track Court No.5, Coimbatore at Tiruppur.

2. Though notice was served on the second respondent, no one appeared on his behalf nor his representative was present before this Court. Considering the pendency of this appeal, this Court is inclined to dispose of the same based on available records.

3. It is the case of the appellant that on 03.12.2008 at about 8.30



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a.m. when the first respondent claimant was driving his van bearing Regn.No.TN 39 AT 1067, at that time a TATA ACE van bearing Regn.No.TN 25 J 0743 driven by its driver stopped the said van without giving any indication, due to which the van driven by the first respondent hit the TATA ACE van which resulted in causing accident. Thereby the first respondent sustained grievous injuries and was admitted in the hospital. Claiming compensation in a sum of Rs.15,00,000/- the claim petition has been filed by the first respondent.

4. Before the Tribunal, the claimant examined P.W.1 to P.W.3 and marked Exs.P.1 to P.16. On the side of the respondents, neither any documents were marked nor any witnesses were examined. After adjudication, the Tribunal has fixed a sum of Rs.2,30,480/- to be payable by the second respondent / insurer of the TATA ACE van and Rs.3,45,720/- to be payable by the third respondent / insurer of the claimant van by fixing 40% : 60% contributory negligence on the part of the first respondent / owner of the TATA ACE van and claimant. Challenging the negligence fixed on the part of the insurer of the claimant's van, the present appeal has been filed.



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5. The main grievance canvassed by the learned counsel for the appellant is that it is well settled principle of law that in a case where, third party is involved, the liability of the insurance company would be unlimited. Where, however, if the compensation is claimed for the death of the owner or another passenger of the vehicle, the claim of the insurance company would depend upon terms thereof, as the contract of the insurance

6. The learned counsel appearing for the respondents 4 to 7 submits that during the pendency of the appeal, the claimant died, due to which the respondents 4 to 7 were impleaded as party in this appeal. He further submits that since the second respondent stopped the van in the middle of the Van, the first respondent claimant dashed the second respondent Van. Hence, the 60% contributory negligence fixed as against the first respondent / claimant, which is *per se* unsustainable.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 4 to 7 and perused the materials placed on record.



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8. Though the name of the second respondent was printed in cause list, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

9. The appellant is the insurer of the vehicle of the 1st respondent, who has since died and the 3rd respondent is the insurer of the offending vehicle, which belongs to the 2nd respondent. It is the consistent view of the courts that insofar as any claim made by any claimant against his insurer for an accident, in which the vehicle is involved, no claim is payable so long as the policy is not a comprehensive policy. In the present case, it is not established that the policy is a comprehensive policy/package policy and such being the case, the appellant, as the insurer of the vehicle belonging to the 1st respondent, cannot be made liable to pay the compensation to respondents 4 to 7, who are the legal heirs of the 1st respondent, as liability to the extent of 60% has been mulcted on the 1st respondent. Therefore, the appellant cannot be made liable to pay the 60% liability to



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the legal heirs of the 1st respondent and the legal heirs of the 1st respondent, viz., respondents 4 to 7 would be entitled to claim only 40% compensation from the 3rd respondent, who is the insurer of the offending vehicle belonging to the 2nd respondent.

10. Accordingly, the respondent 4 to 7 are entitled to claim 40% compensation as against the third respondent / insurance company, however, in respect of the 60% compensation imposed on the appellant, they are not liable to pay the same, as claimant is not third party to the insurance company. Hence, the appellant / insurance company is directed to withdraw the 60% compensation, if any, deposited by them as per the award passed by the Tribunal. The third respondent is directed to deposit 40% compensation as awarded by the Tribunal to the credit of M.C.O.P.No.815 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents



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4 to 7 through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal.

11. Accordingly, the appeal is allowed with the aforesaid direction. No costs. Consequently connected miscellaneous petition is closed.

11.10.2023

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

To

1.Motor Accidents Claims Tribunal, Additional District & Sessions Court, Fast Track Court No.5, Coimbatore at Tiruppur.

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



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M.DHANDAPANI, J.

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