IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3464 of 2014

The Divisional Manager,
The United India Insurance Co. Ltd.,
Vellore ... Appellant

Vs.

1.Jeyamani

2.Rajaram

3.Poongothai

4.Rajkumar (Minor)

5.Madhavakonar

6.Ambiga

7.Pandiyan … Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 03.07.2012 made in OP.No.559

of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thiruvannamalai.

For Appellant : Mr.B.Raghavan

For Respondents : Mr.G.Reyan for R1 to R4, R6 & R7

JUDGMENT

The Insurance Company has filed this appeal challenging the award passed in MCOP No.559/2004 on the file MACP (Tiruvannamalai) by the Chief Judicial Magistrate, Tiruvannamalai, dated 03.07.2012 whereby the insurance company is directed to pay compensation to owner of vehicle insured under them.

2. The facts leading to filing of this Appeal is as follows:

The deceased herein namely Govindaraj is the owner of the Tempo Van- goods vehicle bearing Registration No.TN 25-7-0804, met with an accident taken place on 05.07.2002 at about 02.30 hours, on the Bangalore to Krishnagiri road, near Athanur Village, while transporting Betal leaves. Due to the impact, the deceased sustained grievous injuries and succumbed to death. His dependents filed claim petition under Section 166 of Motor

Vehicle Act, claiming compensation for a sum of Rs.25,00,000/- from the appellant insurance company, alleging that the driver of the van negligently driven the vehicle and caused accident.

3. The respondent resisted the claim petition that the vehicle is covered by Act only policy and there is no personal accident cover for the owner of the vehicle. The deceased herein is the owner of the vehicle and the Insurance Company need not pay the compensation for the death of the insured. There is also violation of policy conditions since more number of persons have travelled in the goods vehicle than the permitted capacity.

4. Based on the evidence placed on record, the Tribunal has held that there is a coverage for the deceased herein, hence, the Insurance Company is liable to pay the compensation and awarded Rs.6,09,100/- as compensation, to claimants 1 to 4 and 6. Aggrieved over the award, directing the Insurance Company to pay compensation for the death of the deceased herein, this appeal has been filed.

5. The learned counsel for the Insurance Company has submitted that that there is no coverage for the vehicle involved in the accident as covered by the policy and there is no coverage for any other person including the owner of the vehicle. The Tribunal based on the documents produced on the side of the respondent by wrongly interpreting the Insurance Policy, which was marked as Ex.R1,held that there is coverage for the owner of the vehicle which is not sustainable and finding it has perverse and the same is liable to set aside.

6. Per contra, for the counsel for the claimants submits that there is a clear admission on the part of the officials of the Insurance Company who was examined as RW1 that there is an additional premium has been paid hence on the basis on the evidence placed on record, the Tribunal has rightly held that the Insurance Company is liable to pay the compensation to the claimants.

7. I have considered the submissions made by both sides and perused the records.

8. The Insurance Company examined the officials as RW1 and through him the policy of the vehicle was marked as Ex.R1. The RW.1 has stated that there is no coverage for the owner of the vehicle and they have collected premium only for covering 3rd party, 3rd party property damage, workman compensation to the employee and non-fair paying passengers. The policy copy in the schedule of premium shows that the Insurance Company has fixed the basic premium OD Rs.8,880/- and granted a discount for Rs.765/- and thereafter the gross on the basic OD has been collected as Rs. 7,525/- in the head OD basic then for 3rd party basic has been Rs.2,779/-, for 3rd party property damage was Rs.75, for the workman compensation to the employee was Rs.105, for non fair paying passengers is Rs. 3,009/- has in part B is collected and after giving discount of Rs.576.70/-, the net premium is fixed as Rs. 10,007/- and after adding sales tax of Rs.500/-, the net amount payable for the policy is Rs.10,507/-, this has been paid as a total premium.

9. In the very same insurance policy in the schedule of premium on the A-part it is mentioned that minimum premium of Rs.300/-. The claimant has cross examined his RW1 and suggested that the additional premium amount paid for covering the owner of the vehicle and that has been denied by the RW1 in his cross examination. However, it is stated by him that the additional premium to be paid for covering the owner of the vehicle would be Rs.100/- on the basis of this statement and since there is a mention about the minimum premium of Rs.100/- in schedule of premium, the Tribunal has held that this minimum premium is collected for the purpose of coverage of owner of the vehicle. On perusal of the Ex.R1 Insurance policy, it shows that in part-A of the schedule of the premium, the minimum premium liable is mentioned as Rs.100/- and amount is not collected and paid as one of the components of the premium. This aspect is not properly considered by the Tribunal only based on the oral evidence of the RW1 that too in the context of answer given by the RW1 that the premium coverage to be payable for the owner of the vehicle to be Rs.100/- and connect the minimum premium in the A-part as if it is paid for covering the owner of the vehicle is not proper finding and the same is liable to be set aside. When the various additional premium collected by the Insurance Company has been listed out in the A & B schedule part, there is no inclusion of premium for the owner of the vehicle. Since the deceased, owner of the vehicle is not covered by the policy, and the appeal is liable to be allowed.

10. In view of the discussions made above, this Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is set aside. No costs.

24.08.2023

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

To:

1. Motor Accident Claims Tribunal,
   Chief Judicial Magistrate Court,
   Thiruvannamalai.

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

K.RAJASEKAR,J.

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C.M.A.No.3464 of 2014

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