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CMA No. 1248 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1248 of 2022
and
C.M.P. No. 9179 of 2022

The Divisional Manager,
United India Insurance Co.Ltd.,
Motor third party claims office,
Kamarajar Street,
Kanchipuram.
Now at,
Motor Third Party Service Hub,
A.R. Plaza, No. 35, 36 & 37,
45 feet road extension,
Balaji Nagar, Puducherry – 605 011.

... Appellant

Versus

1.B. Rajeshwari
2.Minor Jeevatharshini
3.Minor Yugabharathi
(Minor petitioners rep. by their NG/NF
mother B.Rajeshwari)
4.Manoranjitham
5.M/s.Mag Blue Metals,
No.9/1, M.K.Reddy Street,
West Tambaram,
Chennai – 600 045.

... Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 438 of 2017 dated 26.11.2019 on the file of the District & Sessions Judge, Additional District court, (FTC), Kanchipuram.

For Appellant : Mr. P. Sankaranarayanan.

For Respondents : Mr. S. Venkatesh for R1 to R4.

No appearance for R5.

J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 438 of 2017 dated 26.11.2019.

2.The respondents 1 to 4 had filed claim petition seeking compensation before the Tribunal stating that on 05.08.2016, while the deceased was working as a Supervisor in PMD Stone Quarrying at Sanagarapuram, the Kobelco Hydraulic Excavator Model No.SK-210HD, Machine S.No. YN12-80402 belonging to the fifth respondent operated by its driver in a rash and negligent manner, hit the deceased, as a result of which, the deceased sustained severe injuries and died on the way to



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the hospital.

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3.The fifth respondent remained ex parte before the Tribunal.

4.The appellant filed counter denying all the averments made in the claim petition stating that the policy issued is in the nature of special contingency policy and it is not related to Motor Vehicles Act; that there are contradictory statements between the first respondent, fifth respondent and the contractor; and that in any case, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the petition.

5. The respondents 1 to 4 examined two witnesses on their side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.6. On the side of the appellant, RW.1 was examined and Ex.R.1 & Ex.R.2 were marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving of the driver of the machine and awarded a compensation of Rs. 15,69,400/- to the respondents 1 to 4 to be paid by the appellant.



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Aggrieved by the said award, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the award of the Tribunal is liable to be set aside as the policy issued by the appellant is not a Motor Vehicle Policy. The act provides that the motor vehicle policy has to be issued in Form 51 attached to Motor Vehicles Act. The policy issued by the appellant would show that it was not issued in the said form. The policy is also called special contingency policy. However, the Tribunal erroneously assumed that it was a motor vehicle policy and awarded compensation on the said basis. Therefore, the learned counsel for the appellant prayed for setting side the award of the Tribunal.

8.The learned counsel for the respondents 1 to 4 per contra submitted that the deceased who was working in a stone quarry as Supervisor suffered fatal injuries because of the negligent operation of the machine by name Kobelco Hydraulic Excavator Model No.SK-210HD which was insured with the appellant; that the Tribunal found



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that the deceased died only due to the negligent act of the machine operator. Therefore, the finding of the Tribunal holding that the appellant is liable to pay compensation cannot be interfered and prayed for dismissal of the appeal.

9. Though notice has been served, none has entered appearance on behalf of the fifth respondent.

10. The only question involved in the instant appeal is whether the appellant is liable to pay compensation in terms of Motor Vehicles Act.

11. From the materials on record, it is seen that the appellant has marked the insurance policy as Ex.R.1. The said policy is called special contingency policy. As rightly contended by the learned counsel for the appellant, there is no indication in the policy to suggest that it is a policy issued in terms of Motor Vehicles Act. The special conditions mentioned in the policy reads as follows;

*“Special Conditions – Machine Detail – Kobelco
Hydraulic Excavator, Model No.SK-210HD, Machine*



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Serial No.YN12-Bo402, Engine No.JO5E-TA46032, YOM-2016, Sum insured – 5450000, Basic CPM with Floter Coverage, Earthquake, STFI, Terrorism, owner surrounding property upto 10% of the machine value, third party liability upto 10% of the machine value, marine transit coverage of first lage (ITC – A clause, 1 Leg of transit). Excess – 1% of sum insured subject to a minimum of Rs.50,000.”

From a reading of the above conditions, it is clear that liability towards third party is restricted to 10% of the machine value. Therefore, the Tribunal erred in computing the compensation in terms of the Motor Vehicles Act. However, the respondents 1 to 4 who are the legal heirs of the third party are entitled to compensation to the accident at 10% of the machine value which comes to the tune of Rs.5,45,000/-. Therefore, this Court is of the view that the award of the Tribunal directing the appellant to pay the compensation of Rs.15,69,400/- is liable to be set aside. The appellant is liable to pay as sum of Rs.5,45,000/- as compensation, as per the terms of the insurance policy.

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,69,400/- is reduced to Rs.5,45,000/- as per the terms of the



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insurance policy together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

The appellant is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment less the amount, if any already deposited. On such deposit, the respondents 1 and 4 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The appellant is permitted to withdraw the excess amount, if the entire award amount has already been deposited. The respondents 1 to 4 are at liberty to claim compensation against the fifth respondent in the manner known to law if they are advised to do so. The share of the minor respondents 2 and 3 are directed to be deposited in interest bearing fixed deposit in any Nationalized Banks till they attain majority and the respondent 1 is permitted to withdraw the accrued interest once in six months. No costs. Consequently, the connected Miscellaneous Petition is closed.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

To

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- 1.The District & Sessions Judge,
Additional District court, (FTC),
Kanchipuram.
- 2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 1248 of 2022

Dated: 23.08.2023