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C.M.A. No. 2216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2216 of 2023
and
C.M.P.Nos.21284 & 21285 of 2023

IFFCO TOKIO General Insurance Co. Ltd.,
Rep., by its Branch Manager,
No.58 A, II – Floor, Anjaneya Tower,
Vizupuram Road, Pavazha Nagar,
Pondicherry – 605 005.

... Appellant

Vs.

1.Sundarambal
2.Santhosh Kumar (Minor)
3.Sri Ganesh (Minor)
[Minors 2 & 3 rep., by their mother and next friend Sundarambal]

4.Manikandan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2019 made in M.C.O.P. No.185 of 2016 on the file of Motor Accident Claims Tribunal, District Court, Karaikal.



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For Appellant : Mr. S. Arun Kumar

For Respondents : Mr. K. Varadhakamaraj, for R1 to R3
R4 – Dispensed with

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award of the Tribunal granting compensation in favour of the respondents 1 to 3.

2. The respondents 1 to 3 herein filed claim petition stating that on 24.06.2016 at about 22.45 hours, when the deceased was riding his two wheeler from East to West direction on the southern side of Tirunallar Main road, the fourth respondent in his two wheeler came in a rash and negligent manner in the same direction and dashed the vehicle of the deceased, as a result of which the deceased sustained fatal injuries.

3. The fourth respondent herein remained ex parte before the Tribunal.



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4. The appellant filed a counter stating that even according to the claim petition, the fourth respondent is the tort-feasor and hence, the claim made on behalf of the respondents 1 to 3 who are the legal heirs of the insured cannot maintain a claim petition against the appellant, who is the insurer for the vehicle of the deceased.

5. The respondents 1 to 3 examined PW.1 and PW.2 and marked Ex.P1 to Ex.P17. The appellant examined RW.1 and RW.2 and marked Ex.R1 and R2.

6. The Tribunal, after taking into consideration the oral and documentary evidence determined the compensation amount as Rs.6,12,000/- and directed the appellant to pay compensation to the respondents 1 to 3.

7. The learned counsel for the appellant submitted that it is clear from the claim petition and from the evidence on record that the fourth respondent is the tort-feasor. The vehicle of the deceased was insured with the appellant. Since the fourth respondent did not have any insurance policy, the appellant



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was made a party in the claim petition. The learned counsel submitted that since the deceased was a rider and insured with the appellant, their liability is restricted to Rs.1 lakh as per the terms of the policy. The appellant would not be liable to pay compensation for the tort committed by the fourth respondent who was not insured with the appellant.

8. The fourth respondent remained ex parte before the Tribunal and the learned counsel for the appellant made an endorsement to dispense with notice to fourth respondent. Hence, notice to fourth respondent is dispensed with.

9. Mr. K. Varadhakamaraj , the learned counsel for the respondents 1 to 3 per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for. The learned counsel further submitted that even if the liability of the appellant is restricted to Rs.1 lakh, liberty may be given to the respondents 1 to 3 to recover the compensation from the fourth respondent herein.



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10. On perusal of the records, it is seen that is the admitted case of all parties concerned that the fourth respondent was the tort-feasor. The Tribunal also found that the fourth respondent was the tort-feasor based on the evidence of record. The fourth respondent did not have an insurance policy. However, it appears that the claimants have impleaded the appellant who was the insurer of the vehicle belonging to the deceased.

11. It is seen from the records that besides the admitted case of the parties, the finding of the Tribunal is that the fourth respondent is guilty of negligence. On facts, this Court finds that there is no infirmity in the said finding. Having found that the fourth respondent was the tort-feasor, this Court is of the view that the Tribunal ought not to have directed the appellant to pay the compensation determined by it. However, it is seen that as per the policy document, the appellant is liable to pay Rs.1 lakh to the rider under personal accident coverage. The terms of the policy has been extracted in the award of the Tribunal and there is no dispute with regard to the said fact also. Therefore, this Court is of the view that the appellant's liability can be restricted to only Rs.1 lakh payable to the respondents 1 to 3. However, the



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respondents 1 to 3 would be entitled to claim compensation from the fourth respondent herein. Therefore, it is open to the appellant to recover the balance compensation amount determined by the Tribunal from the fourth respondent herein.

12. With the above observation, the Civil Miscellaneous Appeal is partly allowed.

13. It is seen from the affidavit that the appellant had paid Court fee twice. In view of the same, the petition in C.M.P.No.21285 of 2023 is ordered for refund of Court fee. C.M.P.No.21284 of 2023 is closed.

22.09.2023

Index: Yes/No

Neutral Citation: Yes / No

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SUNDER MOHAN, J.

AT

To

1.The Motor Accident Claims Tribunal, District Court, Karaikal.

2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.2216 of 2023 and
C.M.P.Nos.21284 & 21285 of 2023

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