IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No. 4180 of 2019
and
CMP.Nos.23599/2019 & 5038/2020

The Branch Manager,
M/s.SBI General Insurance Company Limited,
Chennai – 600 006. ... Appellant/2nd respondent

..Vs..

1.Periyasamy
2.Malar
3.Niwaz
4.Selvaraj
5.The Branch Manager,
State Bank of India,
Kallakurichi. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 15.04.2019 made in M.C.O.P.No.101 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mr.M.B.Raghavan
for M.B.Gopalan Associates

For Respondents : Mr.K.A.Ramakrishnan for R1 - R3
Mr.P.Valliappan for R4 (SETC)
for Senior Counsel Mr.K.Kathiresan
No appearance for R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 15.04.2019 made in M.C.O.P.No.101 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

2. The facts giving rise to the filing of the appeal is that on 07.02.2012 at about 05.00 p.m., when the deceased Gokul was returning in his bicycle from School, near Thottiyam bus stop, a Tractor bearing Regn.No.TN-32-S-5715 proceeding to Kachirayapalayam driven by its driver in a rash and negligent manner, hit against the deceased, due to which, he sustained fatal injuries where he died on the same day. Claiming a compensation of Rs.10,00,000/-, the claimants filed a petition in MCOP.No.101 of 2015 before Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

3. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the

accident occurred only due to the rash and negligent driving of the driver of the Tractor bearing Regn.No.TN-32-S-5715 and hence directed the appellant/Insurance Company to pay the compensation of Rs.10,00,000/- to the claimants and recover the same from the owner of the vehicle.

4. The learned counsel for the appellant has submitted that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He further submitted that it grossly erred in holding that the appellant is liable to pay compensation in respect of the accident involving the vehicle bearing Regn.No. TN-32-S-5715, which was not insured by them. The Tribunal having clearly found that the 1st respondent's vehicle was not insured and it could not have held the appellant is liable to pay compensation to the claimants. It has erred in holding that the policy relied upon by the claimants pertained to vehicle bearing Regn.No.TN-32-S-5715 whereas it was clearly issued for another vehicle bearing Regn.No. TN-32-R-9999 owned by another customer of the Bank. It failed to appreciate that the Bank had submitted the proposal and obtained the policy on behalf of the owner of the vehicle bearing Regn.No. TN-32-R-

9999 and hence the appellant could not be blamed in any manner for non-insurance of the vehicle bearing Regn.No.TN-32-S-5715. It ought to have held that the Bank is responsible for the lapses if any since all proposals and payments of premium was made by the Bank on behalf of the borrowers for the hypothecated vehicles and therefore, the appellant could not be blamed or held liable under policy issued for a different vehicle. The Tribunal having found that the Bank had committed lapses and wrongly fastened blame on the appellant. The appreciation of evidence by the Tribunal is not reasonable but perverse and unreasonably construed against the appellant. It has virtually turned a blind eye to the lapses of the owner of the vehicle and Bank. It ought to have exonerated the appellant of any liability. He further submitted that the appellant has already deposited 50% of the award amount before the Tribunal. Hence, he prays to allow this appeal.

5. Heard the learned counsel appearing on behalf of the fourth respondent.

6. Heard the learned counsel for the appellant and the learned

counsel for the fourth respondent and perused the entire materials available on record.

7. Before the Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and eleven documents were marked as Ex.P1 to Ex.P11. On the side of the respondents, three witnesses were examined as RW1 to RW3 and eight documents were marked as Ex.R1 to Ex.R8.

8. A perusal of Ex.P2/cover note would reveal that the policy number of P.Selvaraj is 159227 on the vehicle No.TN-32-S-5715 and the period of insurance policy is from 30.12.2011 to 29.12.2012 . It is also seen by way of Ex.P5 that the premium amount of Rs.3294/- has been deducted from the account of P. Selvaraj. A perusal of Ex.R5 would reveal that A.Selvaraj had also paid the premium of Rs.3294/-

9. Perusal of Ex.R3 would reveal that the premium amount is paid in the name of A. Selvaraj for the Cheque No.995671 dated 13.12.2011 and

hence wrong proposal is given. The Bank had sent 12 premium amounts jointly to the Insurance Company. In such process, a transaction has wrongly been made in respect of the premium amount in the name of A. Selvaraj instead of P. Selvaraj. This is an error committed by the Bank. Upon perusing the available records, particularly, relying on the documents such as Ex.P2, Ex.R5 and R6, this court is of the considered view that it would be appropriate to fix the liability on the appellant/Insurance Company to pay the compensation to the claimants and thereafter, recover the same from the R5/Bank. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

10. In the result,

(i) This Appeal is partly allowed. Consequently, connected miscellaneous petitions are closed. No costs.

(ii) The appellant/Insurance Company is directed to deposit the remaining 50% of the award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.No.101 of 2015, within a period of six weeks from the date of receipt of a copy of this Judgment, in accordance with law and permitted to recover the entire award amount from the R5/Bank.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the Bank account of the claimants through RTGS within a period of two weeks thereafter.

Index:Yes/No **15.06.2023**
Internet:Yes/No
gv

A.A.NAKKIRAN, J.

gv

To

1. The Motor Accidents Claims Tribunal,
   III Additional District Court, Kallakurichi.

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

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