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C.M.A.No.1620 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**C.M.A.No.1620 of 2017
and CMP.No.8581 of 2017**

The Manager,
M/s. Reliance General Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Dharmapuri - Omalur Main Road,
Salem.

... Appellant

-VS-

1. Jothi
2. Dhanush (Minor)
3. Naveenkumar (Minor)
(Respondents 2 & 3 Minors represented by
by mother & NF 1st respondent)
4. Muniammal
5. Vetrivel

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in MCOP.No.195/2012 dated 31.08.2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Hosur.

For Appellant

: Mr.E.Rajadurai

For M/s.B.Gopal Associates

For Respondent

: RR1 to 4 – no appearance

R5 – NDW vide endorsement made
in the GO



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JUDGMENT

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This appellant/Insurance company has come forward with this appeal, challenging the decree and judgment passed in MCOP.No.195/2012 dated 31.08.2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Hosur contending that the amount of compensation awarded under different heads are excessive.

2. The fact of the case is as follows:

On 21.06.2011, the deceased Thommappan was returning from Tutucorin to Hosur with salt load as owner of the vehicle bearing Reg. No.TN 70 C 3457 driven by its driver insured with the appellant, in a rash and negligent manner, due to which, the vehicle was capsized. As a result, the deceased sustained fatal injuries and died on the spot. Thereafter, the claimants have filed a claim petition under Section 166 M.V.Act, claiming compensation of Rs.20,00,000/- before the Motor Accidents Claims Tribunal.

3. Before the Tribunal in order to prove the case, the claimants have examined two witnesses viz., PW1 and PW2 and marked Exs.P1 to P6, On the side of the appellant respondent, no witness was examined and no document was marked. The Tribunal, considering the pleadings, oral and documentary



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evidence, allowed the petition in part and awarded a sum of Rs.18,11,750/- as compensation to the claimants under various heads, aggrieved by the said award the appellant/insurance company has filed this appeal before this Court.

4. The learned counsel for the appellant/insurance company submitted that the lorry was driven by its driver in a rash and negligent manner, the accident had happened. In order to escape from the offence, the driver of the lorry lodged a police complaint stating that the deceased, who is the owner of the vehicle, was driving the vehicle and committed the accident, for which, the Law Enforcing Agency, registered a criminal case as against the deceased person. In order to prove the same, before the Tribunal, PW2 , who is the eyewitness, examined as if he came behind the lorry, stated that the 5th respondent has driven the lorry and the deceased was travelled in the cabin. Without considering the same, the Tribunal has fastened the liability as against the insurance company, which is unsustainable. The other heads awarded by the Tribunal are also excessive. Hence, this Court may interfere with the award and allow this petition.

5. Heard the learned counsel for the appellant/insurance company and also perused the materials available on record. Notice has been served to the



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respondent and their names have printed in the cause list, no one appeared on their behalf. Considering the pendency of the appeal, this Court is inclined to dispose the case based on the available records.

6. The facts of the case are not in dispute. The deceased is the owner of the vehicle and the appellant is the insurer of the vehicle. Though the appellant has claimed that the driver only has driven the lorry and the deceased, who is the owner, has not driven the lorry. However, based on the complaint lodged by the driver/ 5th respondent, an FIR was registered as against the deceased person and the Tribunal has also awarded compensation in favour of the claimants.

7. The major grievance of the Appellant is that the deceased is the owner of the lorry, who was an occupant at the time of accident and therefore, the claimants are is not entitled to claim third party insurance as against its own insurer since the deceased does not come under the purview of third party and if at all the claimants are entitled to any compensation it is only a sum of Rs.2 lakhs towards personal accident coverage.

8. Further, the policy of contract between the appellant and the deceased is an Act Only Policy, which does not provide for coverage in respect of the



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owner. Further, it is the stand of the appellant that towards personal accident cover for the owner, only in the result of death or amputation, there is coverage.

In the case on hand, due to the accident, the deceased. Such being the case, the deceased being not a third party and also have personal accident cover, the insurer of the vehicle cannot be made liable to pay the compensation. However, the Tribunal has erroneously passed the order granting compensation, which is wholly misdirected and the same deserves to be set aside.

9. In the result, the order of the Tribunal is quashed and this appeal is allowed. The appellant/insurance company is directed to deposit a sum of Rs.2,00,000/- as compensation to the claimants with interest at 7.5% per annum, after deducting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants is permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

NCS : Yes/No

M.DHANDAPANI, J.



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