IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.574 of 2017
and
CMP.No.3409 of 2017

The Manager,
M/s. National Insurance Co. Ltd,
No.62 TSR Periya Kadai Veethi, Kumbakonam,
Thanjavur District. ...Appellant

Vs.

1. Dhanalakshmi
2. Kolanjinathan
3. Murugesan
4. Ambikapathy
5. IFFCO TOKIO General Insurance Co. Ltd.,
   Kingstone Park, 2nd Floor,
   No.19/1, Ramalingam Nagar,
   Uraiyur, Trichy – 17. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment and Decree passed in M.C.O.P.No.425 of 2012 dated 09.03.2015 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Ariyalur District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Kannan, for R1 & R2
No Appearance, for R3
Not ready notice, for R4
Mr.C.R.Krishnamoorthy, for R5

JUDGEMENT

Challenging the Judgment and Decree passed in M.C.O.P.No.425 of 2012dated 09.03.2015 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Ariyalur District, the insurer has come up with this appeal.

2. It is the case of the appellant that, the 1st and 2nd respondents/claimants filed a claim petition claiming a compensation of Rs.10,00,000/- on the ground that, on 17.11.2011 at about 8.00 pm., when the deceased Ganesan was travelling as a pillion rider along with two others in the vehicle bearing Regn.No.TN.61-B-3970 owned by the 4th respondent insured with the 5th respondent, the lorry bearing Regn.No.TN-32-B-2035 owned by the 3rd respondent insured with the appellant/insurance company, driven by its driver in a rash and negligent manner, which came in the opposite direction, dashed

against the vehicle in which the deceased Ganesan and others were travelling, as a result of which, the deceased and the driver of the vehicle died on spot. Thereby, the 1st and 2nd respondents/LR's of the deceased filed a claim petition seeking compensation for the death of the deceased. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.10,00,000/-. Aggrieved by the said order, the appellant is before this Court, questioning the liability of the insurer.

3. Learned counsel for the appellant, who is the insurer of the offending vehicle submitted that, the compensation granted is excessive and the claimants being the brother and sister of the deceased cannot be brought within the ambit of Class-I legal heir of the unmarried deceased and at best, they would be titled only to a compensation of Rs.50,000/-. He further submitted that, triple driving is in violation of the Policy conditions and therefore, the appellant/insurance company is not liable to compensate the claimants. Further, it is pertinent to note that, the driver of the two-wheeler was in drunken state, which is also in violation of the policy condition. Further, the tribunal has not taken into account the evidence of RW1, who has specifically pleaded that the vehicle of the 3rd

respondent was not driven in a rash and negligent manner. In all, it is the contention of the learned counsel that, the appellant is not liable to pay the compensation to the claimants and accordingly prayed for appropriate orders setting aside the impugned award passed by the tribunal.

4. Learned counsel appearing for the 1st and 2nd respondents submitted that, the tribunal has taken into consideration all the relevant materials including the Legal Heirship certificate of the claimants and had come to the conclusion that as legal heirs of the unmarried deceased, the claimants are entitled to receive compensation towards the loss sustained by them on account of the death of the deceased and the compensation awarded could in no terms be said to be excessive or disproportionate and therefore no interference is warranted Accordingly, he played for dismissal of this appeal.

5. On the above said contentions, heard learned counsel appearing for the 5th respondent and perused the material documents placed on record.

6. Though notice was served on the 3rd respondent and his name was

printed in the cause list, however, none appeared on behalf of the 3rd respondent. Considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the available materials.

7. The factor and manner of the accident is not in dispute and the death of the deceased is also not disputed by the parties. The appellant/insurance company attacks the award of the tribunal on the ground that, the driver of the two-wheeler was in a drunken state and that the two-wheeler was carrying three persons which is not in terms of the contract of insurance and therefore, there is no liability for the appellant to compensate the claimants.

8. A perusal of the materials available on record reveals that, though the claim made by the appellant is that three persons have travelled in the vehicle in which the deceased was travelling when it met with an accident, however, the appellant has not proved through any convincing oral evidence that three persons have travelled in the vehicle. In the absence of any proof, the only inference that could be drawn is that, the deceased had travelled in a motorcycle which met in an accident and died. Further in respect of the death of the

deceased, the claim has been registered by the legal heirs. It is not the case of the appellant that three claims have arisen to prove that the deceased was triple riding in the said vehicle. In the absence of any concrete proof, the stand of the appellant that there is a violation of the policy conditions cannot be accepted and the same is rejected

9. In so far as the contention relating to drunken driving is concerned, the deceased was not the driver of the vehicle and he was only a pillion rider. If at all the case of drunken driving is made out, it could be only against the person who drove the vehicle, who would partake the character of the tort-feasor and it would not be against the deceased, who was merely a pillion rider. Further, a perusal of the Ex.P1, FIR reveals that the accident had happened due to the rash and negligent driving by the driver of the 3rd respondent. No Contra material to establish that the driver of the 3rd respondent had not driven the vehicle in a rash and negligent manner has been placed before the tribunal. Therefore, after properly appreciating all the materials, the tribunal has held that the driver of the 3rd respondent had driven the vehicle in a rash and negligent manner and caused the accident and therefore the appellant as the insurer is liable to indemnify the

insured.

10. In so far as the contention relating to the deceased being unmarried person and the legal heirs are the brother and sister of the deceased and that no claim can be maintained by the said individuals is concerned, it is to be pointed out that, it is not the case of the appellant that the deceased was not living along with the claimants. If the claimants and the deceased were living as a joint family, necessarily the deceased would have also contributed to the family and therefore the earning from the deceased would necessarily be a loss to the claimants, which needs to be compensated by the appellant/insurance company. Therefore the said contention is also negatived.

11. In so far as the contention relating to the driver of the offending vehicle having no valid licence is concerned, even then the appellant/insurance company is liable to pay the compensation, as the accident had happened due to the rash and negligent driving of the driver of the 3rd respondent and if at all the insurance company is aggrieved with regard to the driver not having a valid driving licence, it has to proceed with the 3rd respondent in the manner known to

law and that cannot be the basis to hold that the insurance company is not liable to compensate the claimant.

12. On an overall consideration of the entire materials placed on record, this Court is of the view that the findings given by the Tribunal with regard to the contentions advanced as also the compensation awarded is based on the materials and also on the basis of the law laid down by the Superior Courts and the same does not warrants any interference.

13. Accordingly the appeal stands dismissed, confirming the impugned award of the Tribunal. The appellant/insurance company is directed to deposit the compensation of Rs.10,00,000/- awarded by the Tribunal to the credit of the M.C.O.P.No.425 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st and 2nd respondents through RTGS within a period of two (2)

weeks thereafter. If any excess amount is deposited by the appellant /insurance company, they are entitled to withdraw the same by way of filing necessary application. No costs. Consequently, the connected Miscellaneous petition is closed.

17.10.2023

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Index	: Yes / No
Speaking Order	: Yes / No
NCC	: Yes / No

To

1.TheMotor Accident Claims Tribunal (Principal District Judge)
Ariyalur District.

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

M.DHANDAPANI, J.

skt

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