IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1502 of 2022
and C.M.P. No.11109 of 2022

The Branch Manager,
New India Assurance Co. Ltd.,
Door No.11-19 & 202nd Floor,
Pupils Park Building,
Government Arts College Road,
Coimbatore - 18. ... Appellant

Vs

1.S.Loganayaki
2.Jayasri
3.Minor S.Abarnasri
(Minor represented by mother/1st respondent)
4.Samathal
5.Narayana Gupta ... Respondents
(R-5 remained ex-parte hence
notice to R5 is dispensed with)

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2019 in MCOP.No.736 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Tiruppur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.Balaji for R1 to R4

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.736 of 2014, dated 20.02.2019, on the file of the Motor Accident Claims Tribunal, II - Additional District Judge, Tiruppur.

2. The respondents 1 to 4 are the claimants in MCOP.No.736 of 2014 on the file of the Motor Accident Claims Tribunal, II - Additional District Judge, Tiruppur. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of Somasundaram, who died in the accident that took place on 23.06.2014.

3. According to the respondents 1 to 4, on the date of accident i.e., on 20.01.2014 at about 01.00 p.m. while the deceased was driving the car bearing Registration No.TN-38-AS-9864 along with two other persons viz.,Selvakumar and Udayakumar, on the Chennai - Krishnagiri National Highways, near B.R.G. Madapalli, Sengalamman Kovil, the front wheel tyre

of the car got bursted, due to which the driver of the car lost his control and rolled upside down on the pipeline, which was laid down on the middle of the highways. Due to the said impact, the deceased and the Udayakumar, who were sitting in front of the car died on the spot; that the deceased was aged about 45 years at the time of the accident, working as a broker in selling and buying used cars; that he was the sole bread winner of his family. Hence, the respondents 1 to 4 filed claim petition claiming a sum of Rs.50,00,000/-, as compensation against the appellant/Insurance Company.

4. The fifth respondent, owner of the car, remained *ex-parte* before the Tribunal.

5. The appellant/Transport Corporation filed counter statement, denying all the averments made in the claim petition and stated that the accident took place due to the negligent act of the driver of the car; that the driver of the car by talking in cell phone drove the car in a rash and negligent manner, without noticing a pothole in the surface of the road, rammed into the centre median in the bridge and invited the accident; that no premium was paid for the driver of the car at the time of the accident; in

any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the respondents 1 to 4 examined P.W.1 to P.W.7 and marked fifty one documents as Exs.P1 to P51. The appellant/Insurance Company examined one witness as R.W.1 and marked one document as Ex.R1 on their side.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act of the driver of the car and directed the appellant/Insurance Company to pay a sum of Rs.17,47,500/- as compensation to the respondents 1 to 4.

8. The learned counsel for the appellant/ Insurance Company submitted that the appellant/Insurance Company had specifically raised a point that the appellant/Insurance Company is not liable to pay any compensation, since, as per the Policy Terms – Owner-Cum-Driver is not covered. He further submitted that the driver along with two other passengers died in the accident which took place on 23.06.2014. Thereafter, three different claim petitions were filed before the Tribunal. Since, the appellant/Insurance Company had admitted its liability in respect of third

party claims, in respect of the two deceased passengers the appellant/Insurance Company has not filed any appeal against the award in the claim petition filed by the legal heirs of the deceased passengers in the car. However, in the instant case he submitted that the driver of the car is not entitled to compensation; that the Insurance Policy marked as Ex.P4 and Ex.R1 shows that the owner cum driver is not covered. He also pointed out the relevant terms of the policy which is extracted hereunder:-

Own Damage		***Liability***	
		Compulsory PA cover for Owner Driver, PA cover for UnNamed Persons, LL cover for paid driver	
NCB(65%)			
CO Premium in Rs	*3127*	*TP Premium in Rs*	*1325*

Learned counsel submitted that no premium was paid for the driver and only third party premium of a sum of Rs.1,325/- was paid. The learned counsel further submitted that the appellant had taken a specific plea in the counter affidavit; that however, the Tribunal while extracting the counter affidavit in the judgment had ignored this vital fact. The learned counsel also submitted that an attempt was made by the respondents to mislead the Tribunal by stating in the claim petition that the driver of the vehicle was Somasundaram, S/o.Late K.T.N.Muthusamy, residing at New No.48, Old No.15, Kumarappa Puram, 2nd Street, Tiruppur, while referring to the deceased. However, while referring to the driver of the vehicle, the name was shown as M.Somasundaram, S/o.Muthusamy, 12/27, Rini Cottage, Kumarappapuram, 4th Street, Tirupur, without initials. The learned counsel therefore, submitted that an attempt was made to mislead the Tribunal and make it appear as if the deceased and the driver of the offensive vehicle were different persons. The Tribunal however had not adverted to any of the above discrepancies.

9. Per contra the learned counsel for the respondents 1 to 4 submitted that since this issue was not decided by the Tribunal, one more opportunity may be given to the respondents 1 to 4 to establish the terms of the policy before the Tribunal. The learned counsel further submitted that the first respondent is the wife and second and third respondents are daughters and the fourth respondent is the mother of the deceased and that if one more opportunity is not given to establish their claims, they would be put to untold hardship and suffering. Therefore, the learned counsel submitted that the matter may be remitted back to the Tribunal for deciding the matter afresh.

10. The only question involved in this instant appeal is whether the legal heirs of the driver of the car who is admittedly a tortfeasor are entitled for compensation payable by the appellant/Insurance Company.

11. The appellant had specifically stated in the Counter statement to the claim petition which reads as follows:-

> *" 3. In this case, the deceased is the driver of the car bearing Registration No.TN-38-AS-9864. As per the policy conditions, the driver of the car has not been covered under the policy. Hence, his legal heirs i.e., the petitioners are not entitled to claim any compensation from the 2nd respondent. Therefore, this petition is not maintainable and liable to be dismissed in limine. Further, as per FIR, the deceased was driving the car bearing Registration No.TN-38-AS-9864 in a rash and negligent manner by talking in cell phone and as a result the car was jumped into the centre median in the bridge and met with an accident. Therefore, the deceased himself cause for the accident. Further, it is violation of Motor Vehicle Act and policy conditions. Therefore, the petitioners are not entitled to get compensation. "*

12. The respondents 1 to 4 had marked Ex.P.4, the Insurance Policy, which was also marked by the appellant/Insurance Company as

Ex.R.1. As per the Policy, which have been extracted supra no premium was paid for Personal Accident Cover for owner- cum-driver. Only a third party premium for a sum of Rs.1,335/- was paid. As rightly pointed out by the learned counsel for the appellant/Insurance Company, the claim petition filed by the legal heirs of the passengers of the offensive car, who died in the accident were allowed by the Tribunal and the appellant/Insurance Company have not challenged the same. In the absence of Insurance Policy, the appellant cannot be made liable to pay the compensation. Strangely, the Tribunal has not dealt with these issues at all while passing the award. As rightly pointed out by the learned counsel for the appellant/Insurance Company, even while extracting the counter to the claim petition in the judgment, there is no reference to this specific stand taken by the appellant/Insurance Company. This Court also finds that different addresses were shown for the deceased in the claim petition at S.No. 2 and S.No.19. There was no necessity to give different addresses for the same person in two different places in the claim petition. The above facts would show that the claim petition itself is an abuse of process of law. The Tribunal ought to have adverted to this fact also while adjudicating the claim petition. Therefore, this Court is of the view that the impugned award, awarding compensation to the appellants is liable to be set aside and the same is hereby set aside.

13. In the result, this Civil Miscellaneous Appeal is allowed. The appellant/Insurance Company is permitted to withdraw the award amount deposited, if any. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
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To

1. The II Additional District Judge,
   Motor Accident Claims Tribunal
   Tiruppur.

2.The Section Officer
  VR Section
  High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

gba

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