



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2479 of 2018 and
CMP No.18914 of 2018

Reliance General Insurance Company Ltd.,
Shri Lakshmi Complex,
1st Floor, Bharathi Street,
Omalur Main Road,
Swarnapuri, Salem

... Appellant

Vs.

1. Arthanari
2. Sadasivam
3. Murugesan
4. Kandasamy
5. Venkatesh
6. Shanthi
7. Duraimurugan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree dated 08.11.2013 made in M.C.O.P. No.350 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.C.Paraneedharan for R1 to R6



WEB COPY



J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and decree dated 08.11.2013 made in M.C.O.P. No.350 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

2. The appeal is filed by the Insurance Company. The respondents 1 to 6 are the claimants. The 7th respondent is the owner of the offending car and the appellant is the insurer of the offending car.

3. The case of the claimants is that on 14.04.2011, the deceased Thangammal was standing near Koottapalli bus stop at the extreme left side of Erode-Tiruchengode main road. At that time, a car bearing Regn. No.TN-28-AB-2881, driven by its driver in a rash and negligent manner, hit against the deceased. Due to that impact, the deceased fell down on the ground and sustained injuries on her head, right hand finger, right leg and all over the body. After the accident, she was admitted in the Government Hospital, Tiruchengode and thereafter, shifted to Lotus Hospital, Erode and succumbed to injuries on 27.04.2011.



4. The claimants who are the husband, sons and daughter of the deceased, filed a claim petition in M.C.O.P. No.350 of 2011 before the Motor Accident Claims Tribunal, Sub Court, Sankari, and the Tribunal awarded compensation of Rs.5,04,000/- with interest at the rate of 7.50% per annum from the date of petition till realization.

5. Challenging the said award, the claimants filed an appeal in CMA No.2472 of 2018 for enhancement of compensation and the Insurance Company filed the present appeal questioning the liability.

6. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 6.

7. Though both the appeals were filed in the same year 2018 itself, one appeal i.e. CMA No.2472 of 2018 filed by the claimants was allowed to be argued on 02.11.2018 and the same was disposed of on 08.01.2019 itself, whereas, the Insurance Company appeal was kept pending. Neither the counsel for the Insurance Company nor the counsel for the claimants had brought to the knowledge of this Court and both of them



colluded together and they did not bring the other appeal to this Court while this Court was disposing of one of the appeals. Even after disposal of one of the appeals in the year 2019, the appeal filed by the Insurance Company is pending till 2023.

8. Though the learned counsel for the appellant/Insurance Company argued that the driver of the offending car was not having valid driving licence to drive the category of vehicle involved in the accident and therefore, the liability fixed by the Tribunal is erroneous, he has not disputed the accident and the manner of accident and rash and negligent driving of the driver of the offending car. His only contention is that the driver of the offending car had not got endorsement in his driving licence to drive the Tourist vehicle, whereas, the Motor Vehicle Inspector has clearly made an endorsement in his report that the driver of the offending car was having valid driving licence and the appellant/Insurance Company has not proved contra to the evidence of the Motor Vehicle Inspector. Therefore, there is no merit in the appeal.



9. Already the appeal filed by the claimants was disposed of and this Court has also enhanced the compensation and directed appellant/Insurance Company to pay the compensation to the claimants. The Insurance Company so far not challenged the said order passed by this Court in CMA No.2472 of 2018 dated 08.01.2019. Therefore, for the very same accident, the Court cannot take two different views, since the Insurance Company has not challenged the order passed by this Court in CMA 2472 of 2018.

10. Further, a perusal of the records shows that the Advocate who has filed the present appeal for the Insurance Company only has appeared on behalf of the Insurance Company in the other appeal filed by the claimants in CMA No.2472 of 2018 and despite that, it was not brought to the knowledge of this Court while disposing of the other appeal that this appeal is pending before this Court.

11. The appellant/Insurance Company, without any valid reasons, keeping this appeal pending and despite the other appeal in CMA No.2472 of 2018 was disposed of by this Court by Judgement dated 08.01.2019, so far,



they have not paid the award amount and for the past 4 years keeping this appeal unnecessarily pending not only caused inconvenience to the claimants from getting the award amount, but also caused inconvenience to this Court.

This type of attitude of the Panel Advocates cannot be encouraged.

12. Therefore, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected Miscellaneous Petition is closed. There shall be no order as to the costs in the present appeal.

08.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To
1. The Motor Accidents Claims Tribunal, Sub Court,
Sankari.

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



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P.VELMURUGAN, J

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