IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2942 of 2018 and
C.M.P.No.22289 of 2018

The Oriental Insurance Co. Ltd.,
Represented by Branch Manager,
Saravn Archade, 1st Floor,
Near Sub-Registrar Office,
Avinashi.

...Appellant

Vs.

1. A.Mohamed Roomi
2. M.Ameenma
3. C.Paneerselvam

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 05.01.2018 made in M.C.O.P.No.1063 of 2014 passed by the Motor Accident Claims Tribunal/I Additional District Judge, Tiruppur.

For Appellant	:	Mr.S.Arunkumar
For Respondents	:	No Appearance for RR1 & 2
		R3 – Substitute service effected – No appearance

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JUDGMENT

This appeal is filed challenging the fair and decreetal order dated 05.01.2018 made in M.C.O.P.No.1063 of 2014 passed by the Motor Accident Claims Tribunal/I Additional District Judge, Tiruppur.

2 The appellant is the Insurance Company, respondents 1 & 2 are the claimants and 3rd respondent is the owner of the offending vehicle. The respondents 1 & 2/claimants filed claim petition in M.C.O.P.No.1063 of 2014 claiming compensation of Rs.15,00,000/- stating that on 01.01.2014 at about 15.15 hrs, when their son viz. mohamed Aroon was going by Car from north to south in the Palladam to Pollachi Road, near Mattai Mill, Desanaickenpalayam, Covai, the Driver of the Car drove in a rash and negligent manner and caused accident, due to which he died.

3 The claim petition was not contested by the third respondent owner of the offending vehicle and he remained ex-parte before the Tribunal. The claim petition was contested by the appellant/Insurance company and they filed detailed counter denying all the allegations apart from disputing negligence against the driver of the third respondent's vehicle.

4 Before the claims Tribunal, on the side of the first and second respondents/claimants P.Ws.1 to 3 were examined and Exs.P1 to P4 were marked. On the side of the appellant/Insurance Company, R.W.1 and R.W.2 were examined and Exs.R1 to R5 were marked.

5 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the appellant/Insurance Company and awarded a sum of Rs.11,48,400/- as compensation along with 7.5% interest and since there was violation of policy condition, ordered for pay and recovery from the third respondent/owner of the vehicle. Not being satisfied with the compensation ordered by the Tribunal and aggrieved in fixing the liability on the appellant/Insurance Company, the Insurance Company has filed the present appeal.

6 Learned counsel for the appellant/Insurance Company would submit that the deceased was the occupant of the Car, which belongs to the third respondent and the policy does not cover other than the person mentioned in the terms of the policy Ex.R5. As per Ex.R5, the policy covers only the Driver, Conductor and Cleaner of the vehicle. The materials clearly shows that the deceased was occupant of the Car and he does not come under the definition of third party as per the terms of the Policy. Further at the time of the accident, the Driver of the offending vehicle did not posses valid Driving Lisence. Even though the Driver of the offending vehicle accepted non possession of valid Driving Lisence, the Tribunal ordered pay and recovery as if there was only violation of policy condition. The Tribunal failed to consider the fact that the policy does not cover the deceased and erroneously fixed the liability on the appellant/Insurance company, which warrants interference of this Court.

7 Despite giving sufficient opportunities, none appeared on behalf of the respondents 1 & 2/claimants. As far as 3rd respondent, owner of the offending vehicle is concerned, even though he was set ex-parte before the Tribunal, this Court ordered notice through paper publication and the same was effected and his name was also printed in the cause list, but none appeared on behalf of R3.

8 Heard the learned counsel for the appellant and perused the materials available on record.

9 In this case, accident is not in dispute and the only issue to be decided in this appeal is that whether the deceased falls under the terms of third party and the appellant is liable to pay the compensation to the claimants due to the death of the deceased or not.

10 Admittedly the deceased was an occupant of the Car at the time of accident. As per Ex.R5, the copy of the Insurance Certificate, the policy covers only certain persons and the deceased did not come under the definition of third party as per the terms of the policy in order to get compensation. There is no contra evidence to show that the occupants also covered under the terms of the policy. In the absence of the same, the claimants are not entitled to get compensation. The Tribunal has not appreciated the facts in a right perspective and the liability has been wrongly fixed on the appellant/Insurance Company, as if the deceased, as an occupant, also covered under the terms of the policy, which is erroneous.

11 As pointed out by the learned counsel for the appellant/Insurance Company, a bare looking of Ex.R5, which is copy of insurance policy and the material evidence shows that the deceased was only occupant and he is not comes under the definition of third party as per the terms of the policy of the insurance. Even though the appellant produced evidence for the same, the Tribunal erroneously considered only non availability of Driving Lisence and ordered pay and recovery as if there was only violation of policy condition.

12 Therefore the findings of the Tribunal regarding fixing the liability on the appellant/Insurance Company is set aside. The third respondent/owner of the vehicle is liable to pay the compensation awarded by the Tribunal and hence the third respondent/owner of the vehicle is directed to deposit the award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. The appellant/Insurance company is at liberty to withdraw the amount, already deposited, if any.

13 With the above modification, the Civil Miscellaneous Appeal is allowed. Consequently connected miscellaneous petition is also closed. No cost.

11.09.2023

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Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

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

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

P.VELMURUGAN. J.,

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