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C.M.A.No.1111 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1111 of 2019

and

Cross Obj.No.25 of 2021

and

C.M.P.No.3112 of 2019

M/s.Reliance General Insurance Company Limited,
No.19, Reliance Centre,
Walchand, Hirachand Marg,
Bellard Estate, Mumbai – 400 051 ... Appellant in C.M.A.No.1111 of 2019

Vs.

1. Bagyalakshmi
2. Sneka
3. Akash Dharan
4. Kodila

(Cross objectors 2 and 3 minors, rep. by mother &
next friend 1st petitioner) ...Cross objectors in Cross Obj.No.25 of 2021

Vs

1. Bagyalakshmi
2. Sneka
3. Akash Dharan
4. Kodila
5. K.Kandhavel
6. D.Venkatesan

(Respondents 2 and 3 minors, Rept. By mother & NF 1st respondent)
...Respondents in C.M.A.No.1111 of 2019



C.M.A.No.1111 of 2019

1. M/s.Reliance General Insurance Company Limited,
No.19, Reliance Centre,
Walchand, Hirachand Marg,
Bellard Estate, Mumbai – 400 051.

2. K.Kandhavel

3. D.Venkatesan ...Respondents in Cross objection No.25 of 2021

Prayer in C.M.A.No.1111 of 2019: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.98 of 2014, dated 24.02.2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

Prayer in cross objection No.25 of 2021: Cross objection filed under Rule 22 of Order 41 of the Code of Civil Procedure 1908 seeking to enhance the compensation amount awarded in the Judgment and Decree dated 24.02.2016 made in M.C.O.P.No.98 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Judge, Krishnagiri by allowing the cross appeal in C.M.A.1111 of 2019 on the file of this Court.

In Appeal:

For Appellant : Mr.M.B.Raghavan

For respondents : Mr.S.P.Yuvaraj for Mr.K.Premnath for
R1 to R4
: M/s.S.Murugan for Mr.P.Muthukumar
for R6

No appearance [R5]

In Cross Objection:

For cross : Mr.S.P.Yuvaraj
objectors



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For respondents : Mr.M.B.Raghavan for R1
: No Appearance for R2
: Mr.S.Murugan for R3

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the Insurance company challenging the award passed by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri granting compensation for a sum of Rs.12,30,000/- to the respondents / claimants.

2. The claimants have also filed cross objection seeking enhancement of the compensation awarded by the Tribunal.

3. The case in brief are as follows:

On 04.07.2012 at about 10.30 pm, the deceased Murugan was riding a motor cycle bearing Regn.No.TN 24 K 7355 taking one Jayadev and Raji as pillion riders, at that time a Tractor bearing Regn.No.TN 24 F7051 belonging to the sixth respondent and insured with the appellant insurance company came in a rash and negligent manner and applied sudden brake without any indication. It is the case of the claimants that since no vehicle was coming in the opposite



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direction with glaring lights the deceased could not see sudden brake applied by the driver of the Tractor. As a result, the deceased dashed the motor cycle on the backside of the Tractor resulting in fatal head injuries and succumbed to the same on the way to hospital. Hence, the claimants have filed the claim petition seeking compensation of a sum of Rs.20,00,000/-.

4. Before the Tribunal, the wife of the deceased was examined as P.W.1 and one Vasu who is the eye witness was examined as P.W.2. Exs.A1 to A.10 have been marked as exhibits on the side of claimants. On the side of the respondents, P.W.1 to 5 were examined as marked Ex.1 to 5. After adjudication, the Tribunal have come to a conclusion that the claimants are entitled to compensation for a sum of Rs.12,30,000/- and directed the appellant/ Insurance company to pay the same. Aggrieved by the same, the appellant / Insurance company is on appeal and the claimants are in Cross Objection.

5. The learned counsel for the appellant / insurance company submits that the claimants have not produced any documents in regard to the vehicle which was involved in the accident. He further submits that the Tractor has not been insured with the appellant / insurance company and no premium has been



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paid. Hence the Tribunal has erred in granting compensation to the claimants.

He further submits that the accident had happened on account of the negligence by the deceased himself, since three persons have been travelling in a two wheeler, and the deceased have lost control and dashed behind the Tractor. Hence, the deceased himself is solely responsible for the accident and not the Driver of the Tractor. He further placed reliance on Ex.P.3 which is the policy cover note produced by the claimants. He further submits that it is only the policy cover note and not the original insurance policy. He further averred that the claimants have not produced any documents evidencing proof of payment of premium. He also submits that since the vehicle has not been insured with the appellant insurance company, the insurance company is not responsible to pay the compensation.

6. The learned counsel for the claimants submits that immediately after the accident the Law Enforcing Agency has acted in an appropriate manner. Hence, the findings of the Tribunal fixing the negligence on the part of the driver of the Tractor could not be interfered with. Upon perusing the oral and documentary evidence, the Tribunal has passed the award in favour of the claimants which does not require any interference.



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7. Though the notice was served on the fifth respondent in C.M.A.No.1111 of 2019, no one appeared on his behalf. Considering the period of pendency of this appeal, the same is disposed of based on the materials available on record.

8. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents 1 to 4 and 6 in C.M.A.No.1111 of 2019 and also the cross objector and respondents 1 and 3 in cross objection and perused the materials available on record.

9. It is admitted case that, the accident had happened on 04.07.2012 between the Tractor and the motor cycle resulting in the death of the deceased. It is the case of the claimants that the Tractor has been insured with the appellant / insurance company. However, the insurance company denied the same. In this regard the claimants have produced the policy cover note which was marked as Ex.P.3. However, no policy document has been filed. It is seen from the narration of events that, the insurance company has not received any premium from the owner of the vehicle. However, the claimants claim that the premium has been paid to one Shanmugam which was denied by the insurance



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company. When the evidence of R.W.1 reveals that the said Shanmugam was not an employee of the insurance and the said policy cover is fake, the claimants have not established the case that there is a policy existing, fixing the responsibility upon the insurance company to pay the compensation.

10. In the light of the narration of events as above the Civil Miscellaneous Appeal stands allowed and the impugned award is set aside and the Cross objection filed by the cross objectors stand dismissed. The Insurance Company is directed to withdraw the amount if any deposited by them by making appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed. However, liberty is granted to the claimants to work out the remedy in the manner known to law as against the owner of the vehicle. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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



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M.DHANDAPANI,J

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To

- 1.Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.
- 2.The Section Officer, V.R. Section, High Court, Madras.

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