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C.M.A.Nos.3093 and 3095 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. Nos.3093 and 3095 of 2018
and
C.M.P. Nos.23535 and 23538 of 2018

In CMA No.3093 of 2018

United India Insurance Company Ltd.,
at No.50-A, Pallivasal Street,
Perambalur District

... Appellant

Vs.

1. Krishnamurthy
2. Prakash
3. Royal Sundaram Alliance Insurance Company Ltd.
at 'Sundaram Towers'
45 & 46, Whites Road, Chennai - 600 014
4. K.Karunanithi

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 27.03.2018 made in MCOP No.176 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.P.Paramasivadosh for R1
Mr.G.Vasudevan for R3
R2-Notice Served, No Appearance
R4-Not ready in notice



In CMA No.3095 of 2018

United India Insurance Company Ltd.,
at No.50-A, Pallivasal Street,
Perambalur District

... Appellant

Vs.

- 1.Selvaraj
2. Dhanalakshmi
3. Prabu
4. Prakash
5. Royal Sundaram Alliance Insurance Company Ltd.
at 'Sundaram Towers'
45 & 46, Whites Road, Chennai - 600 014
6. K.Karunanithi

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 27.03.2018 made in MCOP No.246 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court) Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.P.Paramasivadosh for R1 to R3
R4-Notice Served, No Appearance
Mr.G.Vasudevan for R5
R6-Not ready in notice



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COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed by the Insurance Company against the Award and decree dated 27.03.2018 made in MCOP No.176 of 2014 and MCOP No.246 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court) Villupuram.

2. In CMA No.3093 of 2018, the 1st respondent is the injured claimant. In CMA No.3095 of 2018, the respondents 1 to 3 are the claimants and they are the legal heirs of the deceased Minor Karthick. The appellant is the insurer of the Car involved in the accident.

3. The case of the claimants before the Tribunal is that on 02.04.2006 at about 18.30 hours, one Selvaraj was travelling in the Maruthi Car of the 3rd respondent therein, bearing Regn. No.TN-45-H-3999 along with his Minor son Karthick and his shop Assistant one Krishnamurthy and the said car was driven by the said Selvaraj at a normal speed by observing the traffic rules and regulations on the extreme left side of the road from Chennai to Trichy direction. Near Bhadur "Paari Hotel" at Chennai to Trichy N.H. Road, a Lorry bearing Regn. No.TN30-K-1285, belonging to the 1st respondent



therein, which came in the opposite direction from Trichy to Chennai, in a rash and negligent manner, dashed against the Maruthi Car, due to which, the said Selvaraj who drove the car, and one Krishnamurthy who is one of the occupant of the car, sustained grievous injuries. The Minor son Karthick sustained fatal injuries and died.

4. The said Krishnamurthy filed a claim petition in M.C.O.P. No.176 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) Villupuram, claiming compensation of Rs.10,00,000/- for the grievous injuries sustained by him.

5. The said Selvaraj filed two claim petitions before the Motor Accident Claims Tribunal (Special District Court), Villupuram. The petition in M.C.O.P.No.177 of 2014 was filed for claiming compensation of Rs.15,00,000/- for the grievous injuries sustained by him and the petition in M.C.O.P.No.246 of 2013 was filed for claiming compensation of Rs.20,00,000/- for the death of his son Minor Karthick.



6. Since all the three claim petitions arose out of the same accident, the Tribunal heard all the three petitions together and passed a common order. The Tribunal, on finding that, since the accident had occurred due to the rash and negligent driving of the driver of the Car, dismissed the petition filed by the said Selvaraj in MCOP No.177 of 2014. However, the Tribunal partly allowed the petition in MCOP No.176 of 2014 filed by the injured Kirshnamurthy and awarded compensation of Rs.1,41,000/-. Further, the Tribunal partly allowed the petition in MCOP No.246 of 2013 and awarded compensation of Rs.5,90,000/- for the death of the deceased Minor Karthick. The Tribunal had directed the insurer of the car to pay the compensation on behalf of the owner of the said Car.

7. Aggrieved by the Award passed by the Tribunal, the insurer of the said Car has filed the present appeals questioning the liability.

8. The learned counsel for the appellant/Insurance company submitted that the injured and the deceased were only occupants of the Car bearing Regn. No. TN-45-H-3999 and the policy is only a 'Act policy', as per which, the Insurance Company is liable to pay only to the 3rd party. The Tribunal has



held that because of the rash and negligent driving of the driver of the said car only, the accident had occurred and thereby, the Tribunal dismissed the application filed by the driver of the car stating that he was the tort-feasor to the accident. When that being the case, the injured and the deceased were only occupants in the Car and therefore, the Insurance Company is not liable to pay any compensation and they are not liable to indemnify the loss caused by the driver of the said car. Since the car was insured with the appellant/Insurance Company, the Tribunal has held that the appellant/Insurance Company is liable to pay the compensation which is against the proposition of law and also against the statute. It is a contractual liability and there is no liability on the part of the Insurance Company to compensate the occupants who are not coming under the definition of '3rd party claim' and therefore, the order of the Tribunal is liable to be set aside.

9. The learned counsel appearing for the claimants in both the appeals submitted that they have filed cross objection. But, he is not in a position to give even the number of the Cross objection.



10. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the respondents/claimants and perused the materials available on record.

11. On a perusal of the records, it shows that the accident is not in dispute and the manner of accident is also not in dispute. Though the learned counsel for the claimants had taken the defence that the accident had happened only due to the rash and negligent driving of the Lorry, the Tribunal has held that the driver of the Car alone is solely responsible for the accident and dismissed the claim petition filed by the driver of the Car. Once the claim made by the driver of the Car was dismissed by the Tribunal by holding that the driver of the Car was the tort-feasor to the accident, admittedly, it is only a 'Act policy' and the Insurance Company is liable to pay only to the 3rd party claim, whereas, in this case, the injured and the deceased are occupants of the Car for which the insurance policy does not cover the claim. Therefore, the common Award of the Tribunal passed in MCOP No.176 of 2014 and MCOP No.246 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court) Villupuram, is set aside and the appellant/Insurance Company is exonerated from the liability.



12. The claimants are at liberty to recover the award amount passed by the Tribunal from the owner of the offending vehicle namely Car in accordance with law.

13. With the above directions, both the Civil Miscellaneous Appeals are allowed. No costs.

13.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1.The Motor Accident Claims Tribunal
(Special District Court) Villupuram.

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



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C.M.A.Nos.3093 and 3095 of 20



P.VELMURUGAN, J

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