IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3007 of 2019
and
CMP.No.16258 of 2019

M/s. United India Insurance Co. Ltd.,
Divisional Office No.II,
No.104-A, Peramanur Main Road,
Salem – 636 007. ...Appellant

Vs.

1. Umarani
2. Rekha
3. Darshini (Minor)

   3rd respondent Minor rep. by Mother and N.F. Umarani
4. Jinna Pathina Pravinkumar, Kripa Rao
5. M/s. Shriram General Insurance Co. Ltd.,
   Sachin Plaza, Near RBS Bank,
   Saradha College Main Road,
   Alagapuram, Salem – 16..
6. M.Kannan ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of he Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.1409 of 2013 dated 12.01.2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.E.Rajadurai

For Respondents : Mr.M.Varadha Kamaraj, for R6
: No Appearance, for R1 to R3 & R5
: R4 – Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree passed in MCOP.No.1409 of 2013 dated 12.01.2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

2. The case of the appellant is that, the respondents 1 to 3/claimants filed a claim petition claiming compensation of Rs.25,00,000/- for the death of one Sampathkumar on the ground that, on 03.09.2012 at about 06.30 am, when the deceased and his daughter/2nd respondent herein were travelling in the car bearing Regn.No.TN-30-J-8229 owned by the 6th respondent insured with the appellant, driven by one Sujayabalakumar, in order to avoid dashing against the vehicle which was coming in the opposite direction, when the driver of the car turned the vehicle to its left, dashed against the

lorry bearing Regn.No.AP-27-TT-7995 owned by the 4th respondent insured with the 5th respondent, which was illegally parked on the left side of the road by violating the motor vehicle rules and regulations, as a result of which, the deceased sustained grievous head injury and died and the 2nd respondent as well as the driver of the car sustained grievous injuries. Therefore, the claim petition was filed before the Tribunal claiming compensation. Before the Tribunal, the appellant examined 5 witnesses viz., R.W.1 to 5 and marked 6 documents viz., Ex.R1 to 6. The claimants examined 2 witnesses viz., P.W.1 and P.W.2 and marked 18 documents viz., Ex.P1 to 18. After contest, the tribunal, vide impugned common judgment awarded a compensation of Rs.12,65,776/-. Aggrieved by the said order, the appellant/insurer of the car in which the deceased travelled at the time of accident has come up with appeal questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that the daughter of the deceased / 2nd respondent herein also filed a claim petition seeking compensation for the injuries sustained by her and challenging the compensation awarded in her favour, the appellant filed an appeal in

CMA.No.3010 of 2019 and the same was dismissed on 07.07.2023 confirming the negligence fixed by the tribunal, however, the appellant had sought for confirmation only in respect of injured daughter, based on which the said appeal was dismissed. In the present case, the deceased is the owner cum occupant of the car and he is not coming under the third party and only personal accident coverage of Rs.2 lakhs can be awarded for his death. However, the tribunal awarded a compensation of Rs.12,65,776/- and fixed 50% - 50% negligence on stationary lorry and the vehicle owned by the deceased, which is not sustainable.

4. Learned counsel appearing for the 6th respondent submitted that, the 6th respondent sold the car to the deceased on 13.9.2011 and the registration certificate in respect of the said car was also transferred in favour of the deceased and it is deemed that the policy also got automatically transferred to the name of the deceased and therefore, no liability can be fastened on this respondent and the tribunal had erroneously fixed 50% negligence on its part which cannot be acceded to.

5. Heard learned counsel for the appellant and the learned counsel appearing for the 6th respondent and perused the material documents placed on record.

6. Already negligence fixed by the tribunal has been confirmed by this Court in CMA.No.3010 of 2019 filed as against the compensation awarded in favour of the injured daughter/2nd respondent herein. Though it is claimed by the appellant that it is only in respect of the compensation awarded for injury, however, it is to be pointed out that once the Tribunal renders a finding with regard to negligence in the very same case, the appellant cannot wriggle out of its liability by claiming that it is only for the said case. Once the appellant has accepted negligence and liability in respect of the said accident, the deceased having been involved in the very same accident and had died, the same yardstick has to be applied to him and such being the case, the finding recorded therein, as confirmed, requires to be followed here as well and, therefore, the contention to the contra is liable to be rejected.

7. The major grievance of the Appellant is that the deceased is the owner of the car, who was an occupant at the time of accident and he is not entitled to claim third party insurance as against its own insurer since the deceased does not come under the purview of third party and if at all the claimants are entitled to any compensation it is only a sum of Rs.2 lakhs towards personal accident coverage.

8. Though it is submitted that the ownership of the vehicle stood transferred in the name of the deceased, however, the policy of insurance was not transferred on the date when the accident had taken place. However, there is no requirement for the policy to be transferred in view of the Section 157 of the MV Act which prescribes that the change in ownership of the vehicle will make the policy also deemed to be transferred in the name of the person who purchased the vehicle if the conditions laid down in Section 157 have not been adverted to.

9. In the case on hand, the ownership of the vehicle stood transferred and in respect of the policy not having been actually transferred, however,

the same would be deemed to be transferred and in such a case, the deceased would become the owner of the vehicle and would not be entitled to claim compensation at the hands of his own insurer when the negligence is also on the vehicle belonging to the deceased.

10. It is to be pointed out that negligence is fixed in equal proportion on the vehicle in which the deceased was travelling as also the stationary lorry. Therefore, to the extent of 50% liability fixed on the vehicle in which the deceased was travelling, which was insured with the appellant, the claimants would be entitled only to a sum of Rs.2 Lakhs under the personal accident cover, since the deceased was the owner of the car and would not be entitled to any further compensation from the hands of the appellant.

11. However, in respect of the balance compensation of 50% which is fixed on the owner and insurer of the stationary lorry, the claimants would be entitled to the said compensation and the owner and insurer of the stationary lorry would be jointly and severally liable to pay the said compensation.

12. There is no quarrel with the quantum of compensation awarded by the Tribunal and, therefore, this Court is not entering into the quantum of compensation awarded by the Tribunal.

13. Further, it is pertinent to note that when the claim petition was filed in the year 2013, the 3rd respondent was a minor, aged about 13 years. Now, the 3rd respondent would have attained majority. Though no application has been taken out to declare her as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 3rd respondent as major and discharges her guardian M/s.Umarani from the guardianship. The Registry shall carry out the necessary amendments.

14. Accordingly, this Civil Miscellaneous Appeal stands allowed and the award passed by the Tribunal is modified and the appellant-insurance company is directed to deposit the compensation of Rs.2 Lakhs awarded by this Court to the credit of MCOP.No.1409 of 2013. Any amount deposited in excess thereof, the appellant is at liberty to withdraw the same by filing appropriate application. The 5th respondent has

not preferred any appeal, the award of the tribunal passed as against the 5th respondent imposing 50% negligence is confirmed and the 5th respondent is directed to deposit the compensation awarded to the extent of 50% of its share to the credit of MCOP.No.1409 of 2013 within a period of four weeks from the date of receipt of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1 to 3/claimants through RTGS within a period of two weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

22.11.2023

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Copy to:

1. The Motor Accidents Claims Tribunal, Special District Court, Salem.

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

M.DHANDAPANI., J.

skt

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