IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3335 of 2019
and C.M.P.No.19417 of 2019

The Reliance General Insurance Co.Ltd.,
Branch Insurance Company,
Sri Lakshmi Comples, 1st Floor,
Bharathi Street, Omalur Road,
Swarnapuri, Salem, Tamil Nadu ... Appellant/Respondent

Vs

1.Meena
2.Anbarasan (minor)
[R2 represented by his guardian
mother 1st petitioner Meena]

3.Koothavari
4.Seetharaman ... Respondents 1 to 4
/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree dated 05.03.2018 made in M.C.O.P.No.270 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi.

For Appellant ... M/s.S.Arun Kumar

For Respondents ... Notice not in ready [R1 & R2]
... No Appearance [R3 & R4]

JUDGMENT

Challenging the impugned award dated 05.03.2018 passed by the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi in M.C.O.P.No.270 of 2015, the Appellant-Insurance Company has filed the Present Appeal.

2. It is the case of the claimants that on 05.03.2015, at about 11 pm, when the deceased was riding the motorcycle bearing Reg.No.TN 15 Y 3208 along with one pillion rider met with an accident and suffered injuries and inspite of treatment succumbed to the said injuries. Therefore the vehicle which was driven by the deceased was insured with the respondent-Insurance Company. Aggrieved by the loss incurred in view of the said accident, the claimants filed as claim petition before the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi in M.C.O.P.No.270 of 2015, claiming compensation of Rs.10,00,000/- towards the death of the deceased.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and marked Ex.P-1 to Ex.P-11. On the side of the Respondents, R.W.1 was examined and marked the copy of Policy document Ex.R-1. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.6,54,600/- under various head and fastened the liability against the Insurance Company. Aggrieved by the said award, the Appellant/Insurance Company has filed the present Appeal.

4. Learned counsel appearing for the Appellant-Insurance Company submitted that though the vehicle was covered under comprehensive policy, however, the deceased being the driver of the vehicle was only entitled to claim the benefit of Rs.1,00,000/-. The said condition forms part of the policy conditions inspite of the insurer and insured namely the deceased having entered into such a policy, without appreciating the same, the Tribunal has passed an award directing payment of compensation awarded by the Tribunal which is impermissible and the deceased is entitled only for payment of Rs. 1,00,000/-. Accordingly, he prays for allowing the appeal.

5. Though notice was sent to respondents and their name printed in the causelist none appeared on behalf of the respondents today. Considering the pendency of this Appeal which is of the year 2019, this Court is inclined to dispose of the appeal based on the materials available on record.

6. This Court heard the learned counsel appearing for the Appellant-Insurance Company and perused the materials available on record.

7. The factum of the accident and also the nature of the policy which covers the vehicle in question is not in dispute. The policy in question is the comprehensive policy which covers the owner of the vehicle towards personal accident. The pillion rider as a third party and also other third parties as provided under the Motor Vehicles Act. There could be no quarrel that the deceased is also entitled for personal accident cover under the said policy however the deceased having consciously entered into the contract with the insurer by limiting his personal accident insurance only to the tune of Rs.1,00,000/-, the claimants cannot claim the deceased to be as third party so

as to claim higher compensation. What is agreed between the insurer and the insured which has resulted in the contract of insurance has to be followed in letter and spirit. The personal accident cover in respect of the owner having been fixed by mutual consent at Rs.1,00,000/-, necessarily the compensation that could be given to the claimants for the death of the deceased cannot exceed a sum of Rs.1,00,000/- in spite of the fact that the policy is a comprehensive policy. Without appreciating the above fact, the Tribunal as grossly erred in treating the deceased to be as third party and giving compensation in excess than what has been agreed between the insurer and the insured. The said order directing to pay the said compensation is wholly against the contract entered into between the parties and therefore the order passed by the tribunal is liability to be set aside and the order of the Tribunal hereby set aside

8. In the result, the Civil Miscellaneous Appeal is allowed. The Appellant-Insurance Company is directed to pay a sum of Rs.1,00,000/- to the claimants as per the policy along with interest at the rate of 7.5% p.a. There shall be no order as to costs in this Appeal. Consequently, the connected Miscellaneous Petitions are closed.

22.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal
III Addl.District Judge, Kallakurichi.

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

M.DHANDAPANI, J

NHS

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