



C.M.A.No.990 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.990 of 2022

and

C.M.P.Nos.7340 & 7343 of 2022

ICICI Lombard General Insurance Company Limited,
Opposite to Voorhees Higher Secondary School,
Anna Salai,
Vellore – 632 001.

... Appellant

Vs

1.V.Shanthi
2.Minor V. Gokul
3.Minor V. Kalaiselvi
4.S. Chandra
5.S. Murugan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2018 in MCOP.No.191 of 2012 on the file of the Motor Accident Claims Tribunal (I Additional District & Sessions Judge) at Vellore.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.C.Prabakaran



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J U D G M E N T

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The instant appeal has been filed by the Insurance Company challenging the award dated 11.01.2018 passed by the Motor Accident Claims Tribunal (I Additional District & Sessions Judge) at Vellore in MCOP.No.191 of 2012.

2. The appellant / Insurance Company is the second respondent in MCOP.No.191 of 2012, on the file of the Motor Accidents Claims Tribunal (I Additional District & Sessions Judge) at Vellore.

3. The first respondent is the wife, 2nd and 3rd respondents are the minor son and daughter respectively and 4th respondent is the mother of the deceased Vijayakumar had filed the claim petition stating that on 08.07.2011 at about 04.00 a.m., while the deceased was travelling as a Cleaner in a TATA ACE Lorry bearing Registration No.TN-23-AH-8707, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed against the parking lorry, due to which the said Vijayakumar died on the spot. Thus, the claimants are entitled for compensation.



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4. The fifth respondent in the instant appeal who was the first respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal. The appellant/Insurance Company filed counter denying the averments made in the claim petition stating that in any case the claim is excessive.

5. Before the Tribunal, the first respondent examined herself as P.W.1 and examined one more witness as P.W.2 and marked Ex.P.1 to Ex.P.7. On behalf of the appellant/Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and two documents were marked as Ex.R1 and Ex.R2.

6. The Tribunal considering the oral and documentary evidence found that the accident took place on account of the rash and negligent driving of the driver of the offending vehicle and held that the appellant/Insurance Company is liable to pay a sum of Rs.10,28,900/- as compensation to the respondents and recover the same from the first respondent.



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7. Aggrieved by the said order, the appellant/Insurance Company had preferred the instant appeal questioning the finding with regard to liability by the Tribunal.

8. The learned counsel for the appellant / Insurance Company submitted that the finding of the Tribunal holding that the appellant is liable to pay compensation is contrary to the terms of the policy documents Ex.P7. Ex.P7 only covers the risk of driver and not any unauthorised passenger who travelled with the driver. The deceased who was not a driver, therefore was an unauthorised passenger. Therefore, prayed for setting aside the award of the Tribunal.

9. Per contra, the learned counsel for the respondents submitted that the Tribunal considered the terms of the policy and found that there is a coverage for the Cleaner as well. The deceased was working as a Cleaner in the Lorry which was involved in the accident. The carrying capacity as per the terms of the policy is two. Therefore, it cannot be said that the deceased was an unauthorised passenger.



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10. The only question in the instant appeal is whether the Tribunal was right in directing the appellant / Insurance Company to pay and recover from the owner of the offending vehicle and if, the deceased was an unauthorised passenger.

11. This Court, on perusal of the award of the Tribunal finds that the Tribunal had directed the appellant / Insurance Company not liable to pay compensation for two reasons:

(i) the driver of the insured vehicle did not possess a valid driving license and (ii) the deceased was an unauthorised passenger.

The Tribunal therefore directed the appellant to pay and recover from the owner of the vehicle.

12. If the deceased was an unauthorised passenger, then the question of the appellant / Insurance Company paying the compensation amount and thereafter recovering it, does not arise. However, in the instant case, it is seen that the terms of the policy provides for two persons to travel in the vehicle, one being the driver and another co-passenger. The carrying



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capacity is shown as “two” in the policy document Ex.P7. Therefore, this Court is of the view that the Tribunal erred in holding that the deceased was an unauthorised passenger. However, it is seen that the driver of the Tata Ace vehicle had violated the policy condition while driving the vehicle without valid license. Therefore, on the basis of said finding, the Tribunal was right in directing the appellant / Insurance Company to pay and recover the compensation amount from the owner of the offending vehicle.

13. Therefore, this Court finds that the deceased was not an unauthorised passenger and the first respondent / driver had violated the policy conditions. Hence, the direction of the Tribunal to the appellant to pay and recover cannot be faulted. Hence, the same is confirmed. Therefore, this Court finds no reason to interfere with the judgment passed by the learned I Additional District and Sessions Court, Vellore.



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14. Accordingly, this Civil Miscellaneous Appeal stands dismissed. Consequently, connected miscellaneous petitions are closed.
There shall be no order as to costs.

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Index: Yes/No
Neutral Citation: Yes/No
AT

To

1. The Motor Accident Claims Tribunal
(I Additional District & Sessions Judge), Vellore.
2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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