IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.06.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3647 of 2014
and
M.P No.1 of 2014

The Branch Manager,
M/s. ICICI Lombard General
Insurance Company Limited
'Chhottabai Centre'
No.140, Nungambakka High Road
Chennai-600 034. .. Appellant

Vs

1.Mari Murugan
2.Sundaram
3.Venkatesan
4.Kasthuri
5.Gnanam
6.M/s.Sunblue Metal Quarry
Karumarapakkam
Thirukazhukundram
Kancheepuram District
(R6 was suomotu impleaded as per the'
order of this Court dated 25.01.2019
made in M.P No.1 of 2014 in
CMA No.3647 of 2014) .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the judgment and decree dated 11.02.2013 in MCOP No.137 of 2009 on the of the Motor Accident Claims Tribunal (Principal District Judge) Krishnagiri.

For Appellant : Mr.R.Sreevidhya

For Respondents : Mr.P.Dinesh Kumar for R1 to R4

Mr.N.P Kumar for R6

No Appearance for R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 11.02.2013 made in MCOP No.137 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Krishnagiri.

2. The case of the appellant, in brief, is as follows:

On 18.08.2008 at 13.30 hours, at Karumarapakkam Sun Blue Metal Quarry, when the deceased Govindaraj was travelling in the Compressor Tractor bearing Registration No.TN-32-Y-2754 as supervisor to verify the progress of work done by the driver of the Tractor, the driver of the said

Tractor drove the same in a rash and negligent manner without considering the ups and down and due to which, the driver of the compressor tractor had lost his control and capsized in the nearby pit and hence, the deceased was thrown out from the tractor and had sustained fatal injuries and died on the spot. Claiming compensation of Rs.15,00,000/-, the claimants filed a claim petition in MCOP No.137 of 2009 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal fixed the liability on both the Appellant/Insurance Company and the owner of the vehicle, who is the 1st respondent in MCOP No.137 of 2009 and a total compensation of Rs.4,88,000/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the seating capacity of tractor is only one i.e driver alone and there was no scope for any other passenger to travel in the subject tractor. At the time of accident, the deceased Govindaraj was sitting on the

mudguard of tractor as an unauthorised passenger. The Tribunal has erred in holding that the place of the accident viz., a quarry is a public place. The subject accident had taken place in a quarry which is essentially a private place, the same is not required to be covered by the Insurance Policy issued by the appellant under Section 147 of the M.V Act,1988. The coverage under the policy is subject to policy terms and conditions. As per the decision of the Full Bench of the Madras High Court in the case of **Branch Manager, United India Insurance Co. Ltds.,** vs**. Nagammal** reported in **2009 (1) CTC 1 (Mad.) (FB),** there is no question of directing the insurer to pay and recover and the insurer has to be exonerated, once it is established that the victims were not covered under the contract of insurance. Hence, the Insurance Company is not liable to pay compensation to the claimants and he prays to allow this appeal.

4. The learned counsel for the respondents 1 to 4/claimants has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not require any interference in the hands of this Court. Hence, he prays for

dismissal of the Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

7. A perusal of deposition of PW2 would reveal that the accident occurred due to the rash and negligent driving of the driver of the Tractor. FIR (Ex.P1) has also been registered against the driver of the Tractor. Hence perusal of Ex.P1 FIR clearly revealed that the accident has caused due to the rash and negligence driving of the driver of the Tractor. Placing reliance on those materials and evidence, the Tribunal came to a conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the vehicle belonging to the fifth respondent herein. Stating so, the Tribunal fixed the liability on both the Appellant/Insurance Company and the owner of the vehicle, who is the fifth respondent herein, to pay the

compensation of Rs.4,88,000/- to the claimants.

8. On perusal of records, it would reveal that the deceased had travelled in the mudguard portion of the Compressor Tractor as an unauthorised passenger. Admittedly, the offending insured vehicle/tractor is insured with this appellant and the same had been registered with seating capacity of only one, namely the driver and the R.C book /Ex.R2 also reveals the same. As there was no seating capacity for the tractor, it is clearly a travel, which is unauthorized. The coverage under the policy is subject to policy terms and conditions. Since the deceased / unauthorised passenger is not covered under the policy, the appellant/insurance company is not liable to pay any compensation and therefore, this Court opines that it would be appropriate to exonerate the Insurance Company from the liability and fix the liability only against the fifth respondent herein / owner of the vehicle to pay the compensation to the claimants. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of liability alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

9. In the result,

(i) This Appeal is allowed. No costs.

(ii) The appellant/ Insurance Company is permitted to withdraw the amount already deposited, if any before the Tribunal.

(iii) The 5th respondent herein / owner of the vehicle is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP No.137 of 2009, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index : Yes/No
Speaking/Non speaking Order
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To

1.The Motor Accident Claims Tribunal/
The Principal District Judge, Krishnagiri.

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

A.A.NAKKIRAN., J.

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