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Civil Miscellaneous Appeal No.772 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.772 of 2020
and CMP.No.4815 of 2020

The chief Manager
Oriental Insurance Company Ltd.,
3rd party claims hub, No.216,
Old No.115, Prakasam Salai,
Broadway, Chennai-108.

... Appellant

Vs.

1.Rasathi (died)
2. N.Muthukumaran
3. Natarajan
4. Meena
5. Vijaya
6. Pazhaniammal

R1 died. RR3 to 6 are the legal heirs of R1
impleaded vide court order dated 10.12.2024
made in CMP. Nos.28585 & 28586 of 2024
in CMA.No.772/2020 by this Court.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2677 of 2013 dated 18.10.2019 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Cuddalore.



Civil Miscellaneous Appeal No.772 of 2020

For Appellant : Mr.J.Chandran

For Respondents : Mrs.Ramya V.Rao R3 to 6
R2 – No appearance

JUDGMENT

The present appeal has been filed by the insurance company against the judgement and decree in M.C.O.P.No.2677 of 2013 dated 18.10.2019 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Cuddalore on ground of liability.

2. The case of the claimant is that on 23.08.2013 at about 15.00 hours, when one Rasathi was in her house at V.Pillaipalayam and was locking the door from inside, the second respondent's JCB Hydraulic excavator bearing Reg. No.TN 31 AD 7930 was operated in a rash and negligent manner by its driver, and hit the wall of the first respondent's house, due to which, the wall fell on her. As a result of the accident, the petitioner sustained fractures and grievous injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for the injuries.

3. The Tribunal on considering the facts and circumstances of



the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the JCB. The Tribunal thereafter proceeded to fix the total compensation at Rs.3,51,850/- under various heads various heads with interest at the rate of 7.5% per annum. Questioning the liability fixed by the Tribunal, the insurance company has filed this appeal.

4. The learned counsel for the appellant submitted that the claim petition filed by the claimant is not maintainable as the insurance policy is a Marine Policy/Plant and machinery policy. The Tribunal has erroneously awarded compensation to the claimant. Therefore, the appellant is not liable to pay any compensation to the claimants for the accident had taken place since no extra premium was charged to cover the third party liability. If the claimant have any grievance, they have to file a suit before the appropriate forum.

5. Per contra, the learned counsel appearing for the respondents/claimants fairly submitted that the policy is not a Motor



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Vehicle Policy and it is a Plant and Machinery policy. Hence, this Court may grant liberty to the petitioner to work out their remedy before the competent civil court.

6. Heard the learned counsel for appellant/claimant and the learned counsel for the respondents and perused the materials available on record.

7. Admittedly, only when an insurance policy is issued under Motor Vehicle Act, the policy can be construed as a motor vehicle's policy and thereby, any claims could be made for compensation against the insurer concerned. However, in the present case, it is found that the policy is a special policy, which clearly stipulates that it is only a Contractor's Plant and Machinery Insurance Policy, which has got no relevance to the motor vehicle Act or compensation payable thereunder. Hence, the claim petition filed by the injured claimant is not maintainable and therefore, the award passed by the Tribunal is liable to be set aside.

8. With the above directions, the Civil Miscellaneous Appeal



Civil Miscellaneous Appeal No.772 of 2020

is allowed in the above terms. The award passed by the Tribunal is set aside. The Insurance company is directed to withdraw the amount already deposited. However, liberty is granted to the respondents/claimants to work out their remedy in the manner known to law. No costs. The period pending before the lower court as well as this Court is excluded for the purpose of limitation.

17.12.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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M.DHANDAPANI.,J

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To,
Motor Accident Claims Tribunal, Additional Sub Judge, Cuddalore.

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