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C.M.A.No.283 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.283 of 2021

And

C.M.P.No.1882 of 2021

The Divisional Manager,
M/s.Cholamandalam MS General Insurance Company Limited,
Puducherry. ... Appellant

Vs.

1.Poongodi
2.Kandan
3.Ilaveny
4.Elavarasy
5.Barakkathunisa

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.201 of 2013 dated 09.02.2019, on the file of the Motor Accidents Claims Tribunal Principal District Court, Puducherry.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates
For Respondents : Mr.Prakash Adiyapadam for R1 to R4
R5 – No Appearance



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J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 09.02.2019 passed by the Motor Accidents Claims Tribunal, Principal District Court, Puducherry, in M.C.O.P.No.201 of 2013.

2.The learned counsel appearing for the appellant submitted that the respondents 1 to 4/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs alleging that on 29.10.2012 at about 06.30 a.m., the deceased Vinayagam @ Duraivinayagam was going in a bicycle to E-mox mosquito coil Company at Kattukuppam in the Cuddalore to Pondy Main Road from South to North near Sri Vinayaga Weight Machine, Kattukuppam. At that time, a TATA Indico Manza Car bearing Registration No.TN-31-BY-1001 came in the same direction in a rash and negligent manner and dashed over the deceased from backside, due to which, the deceased sustained fatal injuries. After adjudication, the Tribunal awarded a sum of Rs.3,85,000/- as compensation to the claimants along with interest at 6% p.a. from the date of petition



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i.e.,04.03.2013 till the date of realization with proportionate costs and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that the accident happened on 29.10.2012. The fifth respondent manipulated the cover note of the insurance policy as though the coverage started from 29.10.2012 and no end period was mentioned and produced the manipulated cover note to the law enforcing agency and further submitted that the Insurance Company examined the Official witness as R.W1 and marked exhibits Ex.R1 – motor insurance cover note and Ex.R2 – motor policy schedule cum certificate of insurance. The learned counsel further submitted that as per Ex.R1, the policy covers the period from 30.10.2012/ a day after the date of accident to 29.10.2013 and the said date was reflected in Ex.R2 also, however, the Tribunal without considering the above facts, directed the appellant to deposit the compensation amount, which is not sustainable one.

4.The learned counsel appearing for the respondents 1 to 4 submitted that admittedly, the driver of the vehicle owned by the fifth respondent drove the vehicle in a rash and negligent manner and



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dashed over the deceased bicycle due to which the deceased lost his life. The respondents 1 to 4 are innocent dependants of the deceased and with the documents produced by the law enforcing agency at the relevant time, they filed the claim petition. If at all the cover note which was marked by the claimants as Ex.A4 is a manipulated one, it is for the appellant Insurance Company to take appropriate action as against the fifth respondent/ owner of the insured vehicle in the manner known to law and hence, this Court may direct the appellant Insurance Company to deposit the compensation amount at the first instance and thereafter to recover the same from the fifth respondent in the manner known to law.

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

6.The accident and the manner in which the accident happened are not disputed. Admittedly, the driver of the vehicle owned by the fifth respondent drove the vehicle in a rash and negligent manner and dashed over the deceased bicycle due to which the deceased lost his life. The fifth respondent had obtained insurance policy and he



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produced the cover note before the law enforcing agency and on that basis, the claimants filed the claim petition and marked the same as Ex.A4. In the present case, the cover note produced before the law enforcing agency does not tally with the original insurance policy. Even then, the Tribunal has not adjudicated the issue based on Ex.R1 – motor insurance cover note and Ex.R2 – motor policy schedule cum certificate of insurance marked by the appellant Insurance Company and exhibits Ex.R1 and Ex.R2 clearly reveals that the period of policy coverage is from 30.10.2012 to 29.10.2013, which is after the date of accident. Hence, the award passed by the Tribunal warrants interference and the liability fastened on the appellant/ Insurance company is liable to be set aside.

7.The civil miscellaneous appeal is allowed. The judgment and decree dated 09.02.2019 passed by the Motor Accidents Claims Tribunal, Principal District Court, Puducherry, in M.C.O.P.No.201 of 2013, is set aside as against the insurer/ appellant and the claimants/ respondents 1 to 4 are directed to proceed as against the fifth respondent/ owner of the vehicle for recovery of the award amount in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them.



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8.The civil miscellaneous appeal is allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Puducherry.

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