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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1224 of 2022 and
C.M.P.No.8786 of 2022

M/s.ICICI Lombard Insurance Company Ltd.,
No.140, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034. ... Appellant

vs.

1. Kasthuri
2. M.Gopi
3. M.Mohan
4. M.Baskar
5. M.Siranjeevi
6. A.Munusamy ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 25.08.2021 in M.C.O.P.682/2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.

For Appellant	:	Mrs.R.Sreevidhya
For R1 to R5	:	Mr.Dhamodaran Annamalai for Ms.K.Sindhuja
For R6	:	No appearance

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JUDGMENT

Questioning the liability to pay compensation awarded by the Motor Accident Claims Tribunal, Tiruvallur in M.C.O.P.682/2016, the present appeal is filed by the appellant, the ICICI Lombard Insurance Company Limited, Tiruvallur.

2. The respondents 1 to 5 filed the claim petition under Sections 166 of Motor Vehicles Act and Rule 3 of M.A.C.T. Rules, in M.C.O.P.682/2016 before the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Thiruvallur at Poonamallee, seeking compensation of Rs.6,00,000/- for the death of one Munikrishnan (wife of first claimant; father of claimants 2 to 5) in a road accident that occurred on 11.10.2016.

3. The brief case of the claimants is as follows :

On 11.10.2016, Munikrishnan (deceased) was riding a Motorcycle bearing Registration number TN-20-BX-7222 on Thirunindravoor - Kottambedu road and at about 8.20 a.m., a speeding Bolero Van bearing Registration number TN-05-AU-9340 hit the two wheeler from behind, resulting in the instantaneous death of

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Munikrishnan.

4. According to the claimants, the rash and negligent driving of the driver of the Bolero van was the cause of the accident and that since the owner of the van had insured his vehicle with the appellant, the ICICI Lombard Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the Bolero van remained absent and was set *ex parte*. The appellant, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the Bolero van and directed the appellant Insurance Company to pay compensation of Rs.6,00,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 25.08.2021. The Tribunal also held that the liability of the owner and the

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insurer is joint and several.

7. Questioning the liability to pay compensation awarded by the Tribunal, the present appeal is filed by the appellant / the ICICI Lombard Insurance Company Limited under Section 173 of the Motor Vehicles Act.

8. Heard Mrs.R.Sreevidhya, learned counsel for the appellant, Insurance Company and Mr.Dhamodaran Annamalai, learned counsel for the respondents 1 to 5, claimants.

9. Though notice was served on the sixth respondent, the owner of the Bolero van and his name is also printed in the cause list, there is no representation on his behalf.

10. Mrs.R.Sreevidhya, learned counsel for the appellant, Insurance Company contended that since there was no privity of contract between the owner of the van and the insurer, the Policy of insurance produced by the owner of the Bolero van is not a genuine document. The Tribunal though had come to the conclusion that it is a fake policy, had directed the Insurance Company to pay the Award amount on the ground

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that the Insurance Company did not take any follow up action after lodging a complaint (Ex.R1) with the Commissioner of Police, Chennai against the sixth respondent, the owner of the Bolero van. She therefore prayed for setting aside the orders of the Tribunal.

11. Per contra, Mr.Dhamodaran Annamalai, learned counsel appearing for the respondents 1 to 5, claimants contended that the Tribunal after analysing the evidence on record, directed the Insurance Company to pay the award amount and therefore there is no need to interfere with the same.

12. In the instant case, the Policy of insurance furnished by the owner of the van pertains to a two wheeler bearing Registration number TN 22 CY 2940. The Tribunal had in fact analysed this aspect and had come to the conclusion that the policy of insurance produced by the owner of the van is not a genuine document. The Insurance Company had also lodged a complaint (Ex.R1) against the owner of the van with the Commissioner of Police, Chennai. In the circumstances, the Insurance company cannot be held liable to pay compensation to the claimant as there is no privity of contract between the Insurance company and the

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owner of the vehicle. Therefore the owner of the van has to pay the compensation amount to the claimant.

15. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

ii. The quantum of compensation awarded by the Tribunal is upheld.

iii. The sixth respondent, the owner of the Bolero van is directed to deposit the entire compensation amount of Rs.6,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy .

iv. of this order / uploading of this Order to the credit of M.C.O.P.682/2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.

v. On such deposit being made, the respondents 1 to 5, claimants are at liberty to withdraw the same as per the orders passed by the

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Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

vi. The appellant, Insurance Company can withdraw the compensation amount, deposited by them in the Court.

18.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
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To

1.The Motor Accident Claims Tribunal,
II Additional District and Sessions Court,
Tiruvallur at Poonamallee.

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

R.HEMALATHA, J.

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