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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1902 of 2024
and CMP No.15015 of 2024

M/s.Cholamandalam MS General Insurance Co., Ltd.,
New Millennium Complex, No.3 & 4, 1st Floor,
Dindigul Highway Road,
Kalavasal, Madurai. ... Appellant

.vs.

1.Thirumal

2.Palanisamy

3.Murugan

4.Ramasamy

5.Veeran

6.Duraiyan

7.Selvi

8.Mahendran

9.Bazeer Ahamed ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 10.01.2023 made in MCOP No.934 of 2015, on the file of the Motor Accident Claims Tribunal, III

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Additional District and Sessions Judge, Dharapuram.

For Appellant	:	Ms.R.Sreevidhya
For Respondents	:	Mr.Ma.P.Thangavel for R1 to R7 Ms.R.Kalaiselvi for R9

JUDGMENT

This appeal has been filed by the Insurance Company challenging the Award passed by the Tribunal in MCOP No.934 of 2015, dated 10.01.2023.

2.The claimants/respondents 1 to 7 filed the claim petition on the ground that the deceased Thannasi was standing at Tharapuram-Palani Road with grazing sheeps and at about 3.30 p.m., the offending vehicle which was a car belonging to the 9th respondent herein was driven in a rash and negligent manner and it dashed on the deceased. As a result of which, the deceased sustained serious injuries and died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Insurance Company took a very specific stand that the offending vehicle was not covered by any insurance policy and that only a proposal was sent. Therefore, the Insurance Company contended that they are not liable to pay any compensation in this case, since there was no contract of insurance in force on the date of the accident.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, found that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. However, the Tribunal has neither rendered any finding regarding the negligence nor has rendered any finding as to whether there was a subsisting insurance policy covering the offending vehicle. The Tribunal has straight away proceeded to fix the compensation amount and directed the insurance company to pay the compensation.

5.The Insurance Company aggrieved by the above Award passed by the Tribunal has filed the present appeal before this Court.

6.Heard Ms.R.Sreevidhya, learned counsel appearing on behalf of the appellant, Mr.Ma.P.Thangavel, learned counsel appearing on behalf of respondents 1 to 7 and Ms.R.Kalaiselvi, learned counsel appearing on behalf of the 9th respondent.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.In the considered view of this Court, the Tribunal failed to consider the important defence that was taken by the Insurance Company to the effect that there was no contract of insurance in force on the date of the accident. The Insurance Company took a very specific stand the copy of the proposal does not represent the policy, cover note or certificate of insurance and in spite of such a stand taken, the Tribunal even without rendering any finding has proceeded to fix the compensation amount and directed the Insurance Company to pay the compensation.

9.The Award has been passed in a slip shod manner even without rendering any findings on the negligence aspect.

10.In the light of the above discussion, this Court is inclined to interfere with the Award passed by the Tribunal and remand the matter back to the file of the Tribunal to consider the case on its own merits and in accordance with law and more particularly, to deal with the specific defence that was taken by the Insurance Company.

11.In the result, the Award passed by Tribunal in MCOP No.934 of 2015, dated 10.01.2023, is hereby set aside. The matter is remanded back to the file of the Motor Accident Claims Tribunal, Dharapuram and there shall be a direction to the Tribunal to deal with the case on its own merits and in accordance with law and also deal with the specific defence taken by the insurance company apart from rendering a finding of a issue of negligence. This process shall be completed by the Tribunal, within a period of four months from the date of receipt of copy of this order. It goes without saying that both the parties shall be given sufficient opportunity to put forth their stand.

12.In the result, this civil miscellaneous appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

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N. ANAND VENKATESH., J

ssr

To

The Motor Accident Claims Tribunal,
III Additional District and Sessions Judge, Dharapuram.

CMA No.1902 of 2024
and CMP No.15015 of 2024

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