IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.856 of 2024
and CMPNo.7849 of 2024

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
Micro Office, Mummy DaddyComplex,
Mettu Street,Thiruthuraipoondi,
Thiruvarur District. ... Appellant/2nd respondent

Vs.

1. Gunasekaran (Died)
   S/o.Govindasamydevar
   Aayakkaranpulam,
   Vedaranyam Taluk,
   Nagapattinam District.

2. Sakthivel
   S/o.Marimuthu

3. Kavitha
   W/o.Late Gunasekaran

4. Gokula Chelvan
   S/o.Late Gunasekaran

5. Nivedha Devi
   D/o.Late Gunasekaran

[Respondents 3 to 5 are brought on record
as legal heirs of the deceased 1st respondent
Gunasekaran vide order dated 24.08.2023 made
in CMP No.16452 of 2021 in
CMA SR No.160390 of 2019 by
SMJ] ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in MCOP No.28 of 2017 dated 23.07.2019 on the file of the Motor Accidents Claims Tribunal,Chief Judicial Magistrate Court, Nagapattinam.

For Appellant	: Mrs.R.Sreevidhya
For Respondents	: R1 – died R2- Not ready in notice Mr.R.Muruga Bharathi for R3 to R5

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JUDGMENT

On the consent given by either side, the main appeal is taken up for final hearing.

2. The 1st respondent, who is the owner of the vehicle and who

was injured in the accident filed a claim petition before Motor Accidents Claims Tribunal,Chief Judicial Magistrate Court, Nagapattinam, on the ground that on 23.10.2015 at about 10.00 p.m. when he was travelling in the Bolero car owned by him along with his family and when the car was approaching Kannagi Nagar, 2nd street, the driver of the car, who is the 2nd respondent in this appeal, drove the car in a rash and negligent manner and as a result, the car dashed on a electric post causing serious injuries to the claimant. The claimant undertook treatment as an in patient for nearly seven days and he was also operated. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

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 2nd respondent herein had driven the car in a rash and negligent manner and as a result, the accident had taken place. The Tribunal also took into consideration the FIR registered in Crime No.25 of 2015 wherein it was alleged that the 2nd respondent herein had driven the car in a rash and negligent manner and he was also convicted and

sentenced. After having rendered such a finding, the Tribunal fixed the total compensation of a sum of Rs.3,68,598.50/- under various heads and directed the appellant insurance company to pay the amount along with interest. Aggrieved by the same, the Insurance company has filed this appeal questioning the very liability.

4. Heard Mrs.R.Sreevidhya, learned counsel for appellant and Mr.R.Muruga Bharathi, learned counsel for respondents 3 to 5.

5. This Court carefully considered the submissions made on either side and the materials available on record.

6. This Court also carefully went through the award passed by the Tribunal.

7. The main ground that was urged by the learned counsel for appellant was that the claimant was none other than the owner of the Bolero car and hence, he is bound by the terms of the insurance policy which was marked as Ex.P4. The learned counsel further submitted that

the Tribunal found the claimant to have suffered with 40% disability and the injuries that were sustained by the claimant does not fall within the ambit of the terms of the policy and therefore, the insurance company cannot be mulcted with the liability.

8. Per contra, the learned counsel for the claimant submitted that the entire accident had taken place only due to the rash and negligent driving on the part of the car driver and the same was taken into consideration by the Tribunal while fixing the liability. The learned counsel further submitted that the claimant had died during the pendency of this appeal and the legal representatives have already been impleaded in this appeal as respondents 3 to 5.The learned counsel submitted that a very reasonable compensation has been fixed by the Tribunal and the same does not require the interference of this Court.

9. In the considered view of this Court, it is not in dispute that the vehicle in question was owned by the claimant and the accident had taken place when the claimant was travelling in that vehicle along with his family and the vehicle was driven by his driver, who is the 2nd

respondent in this appeal. Under such circumstances, the liability of the insurance company will depend upon the terms of the policy, which has been marked as Ex.P4. It is now too well settled that in a case of this nature, the insurance company can be held liable only as per the terms of the contract under the insurance policy and the owner of the vehicle cannot be treated like a third party in this case. It will suffice to refer to the judgement of the Apex Court in ***Meerabai and Jumma Saha case reported in 2005 ACJ 1 (SC).*** This was also subsequently followed by this Court in ***United India Insurance company Limited Vs.Rekha.***

10. On carefully going through the insurance policy, which has been marked as Ex.P4, it shows the terms of the contract between the insurance company and the owner of the vehicle. To make the insurance company liable for the payment of compensation, the claimant ought to have sustained injuries as specifically covered under the policy. In the instant case, the injuries that were sustained by the claimant was taken into consideration and the disability was assessed at 40%. The same does not fall within the scope of the terms of the policy. This issue was not taken into consideration by the Tribunal and the Tribunal had

mechanically fixed the liability against the insurance company on the ground that the accident had taken place only due to the rash and negligent driving on the part of the 2nd respondent herein.

11. In the light of the above discussion, when the very liability put against the insurance company is found to be unsustainable, it is not necessary for this Court to venture into the question of the quantum of compensation that has been fixed by the Tribunal. In view of the same, the award dated 23.07.2019 passed by the Tribunal in MCOP No.28 of 2017, is hereby set-aside. The amount that has been deposited by the Appellant Insurance company along with accrued interest shall be permitted to be withdrawn by the insurance company.

12. In the result, this Civil Miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

03.06.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH.,J
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To
Motor Accidents Claims Tribunal,Chief Judicial Magistrate Court, Nagapattinam

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