IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3092 of 2024
and C.M.P.No.25499 of 2024

National Insurance Co.Ltd.,
Rep by its Branch Manager,
Branch Office, Anuradha Complex,
III Floor, No. 333, Bangalore Road,
Krishnagiri -635001 ..Appellant

Vs.

1.V.Govindan
2.Minor G.Murugan
3.Minor G.Usha
4.Minor. Monisha
5.K. Rajesh ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award and decree dated 30.09.2013 made in MCOP No.359 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

The Insurance company is the appellant herein, has filed this appeal against the award and decree dated 30.09.2013 made in MCOP.No. 359 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2. It is the case of the claimant before the tribunal that on 08.12.2010, the deceased and other coolies were traveling as mason labourers in an Eicher Lorry bearing Registration No. TN37-B-7310 from Krishnagiri to Jolarpet for construction work. The lorry was owned by the first respondent and insured with the second respondent. While so, around 8.10AM., near Pappammal Nagar on the Krishnagiri- Tirupattur Road, the driver K.Govindaraj drove the vehicle at a high speed, without following traffic rules or using the horn. He suddenly applied brakes and turned the lorry to the left, causing it to topple off the road. The deceased sustained fatal injuries and was first treated at the Government Hospital, Tirupattur, then referred to Madras Medical College Hospital, where she declared died on 11.12.2010. Despite spending a sum of Rs.50,000/- for treatment, she died. The accident occurred only due to the rash and negligence driving of the

driver of the lorry. The legal heirs of the deceased filed a Claim Petition before the tribunal, claiming compensation of Rs.10,00,000/- under various heads.

3. During the trial before the Tribunal, on the side of the claimants, there were three witnesses examined as PW1 to P.W3 and marked 6 documents as Exs.P1 to P6. On the side of the insurance company, one witness was examined as R.W1 and one document was marked as Ex.R1.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.15,34,500/- as compensation to the claimants payable by the 1st and 2nd respondents jointly and severally. Questioning the quantum and liability, the insurance company/appellant herein has filed this appeal before this Court.

5. Learned counsel appearing for the appellant submitted that the number of persons in the lorry exceeded the capacity of the persons insured to be carried in the said lorry and the owner of the vehicle having violated the policy conditions, the insurer is not liable to pay the compensation. However, erroneously, the Tribunal has fastened the liability on the appellant, which requires to be interfered with.

6. Heard the learned counsel for the appellant and this Court has perused the materials available on record carefully.

7. The factum of the accident is not disputed. The only grievance expressed by the appellant with regard to fastening liability is that the vehicle carried more number of persons, than was insured and, therefore, the insurer is not liable to indemnify the owner of the vehicle.

8. It is the specific deposition of R.W.1, the Administrative Officer of the 2nd respondent that the vehicle was insured against third party risk and that the persons, who were travelling in the lorry to the extent of the driver, one cleaner and owner are covered. Further, the policy is a comprehensive policy and not an Act only Policy. That being the case, the appellant cannot shriek its responsibility to cover the risk towards paying the compensation for the death of the deceased.

9. It is also not the case of the appellant that the deceased was not under the employ of the owner of the vehicle. In fact, the deceased was travelling as a coolie, having been employed by the owner of the vehicle and, therefore, as the insurer of the vehicle, it is the duty of the appellant to indemnify the owner, so long as the policy is a comprehensive policy and

covers third party risk. In the present case, the policy is a comprehensive policy and premium amount have been paid towards the occupants in the vehicle and, therefore, the insurer is liable to compensate the claimants.

10. It is not also out of context here to point out that in respect of the very same accident, another appeal in CMA No.4268/2019 had been filed by persons, who had suffered injuries and this Court, by order dated 28.11.2024, allowed the appeal by fixing the liability as against the insurance company. As against the said order no appeal has been filed and the said order has been allowed to attain finality. That being the admitted position, necessarily, the appellant cannot take a contra stand in this appeal to claim that it cannot indemnify the owner, as already in respect of the very same policy, the owner has been indemnified and compensation has been paid to the other victims/claimants, who were injured. Therefore, this Court has to necessarily follow the decision in the aforesaid appeal and this appeal deserves to be dismissed confirming the compensation awarded by the Tribunal.

11. In view of the discussion made in the preceding paragraphs and considering the decision taken by this Court in the appeal filed by the

claimants for the same accident, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest at 7.5%, less the amount already deposited if any, within a period of eight(8) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the compensation along with interest and costs as per the apportionments fixed by the tribunal, by filing necessary applications before the Tribunal. No costs. Consequently connected miscellaneous petition is closed.

29.11.2024

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Index : Yes
Speaking Order : Yes
To
The Judge,
Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

M.DHANDAPANI,J.

msv

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