BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.07.2024

**CORAM**

THE HONOURABLE MRS.JUSTICE **G. ILANGOVAN**

**C.M.A(MD)No.263 of 2024**
**and**
**C.M.P(MD)No.3317 of 2024**

The Divisional Manager,
M/s.New India Assurance Company Ltd.,
Seenivasan Pillai Road,
1st Floor, Sethu Amirtham Towers,
Near Oriental Towers, Thanjavur City,
Thanjavur District. ... Appellant / 2nd Respondent

Vs

1.Tamilarasi ... 1st respondent / Petitioner

2.Ramanathan ... 2nd Respondent / 1st Respondent

**PRAYER :-**

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the judgment and decree dated 21.11.2023 passed in M.C.O.P.No.508 of 2022 before the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

For Appellant : Mr.I.Robert Chandra Kumar

For Respondents : Mr.A.Arun Prasad

**JUDGMENT**

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 21.11.2023 passed in M.C.O.P.No.508 of 2022 before the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

2. The case of the prosecution is that on 31.01.2019, the deceased Gurumoorthi, along with another deceased Surendar was travelling in a car bearing registration number TN 07 BB 4792 on the Ettukudi road. When they were nearing the place of occurrence, the driver of the first respondent drove the same in a rash and negligent manner, lost control and capsized on the left hand side of the road. Because of that Gurumoorthy and other sustained injuries. He was taken to the Government Medical College Hospital, Thiruvarur. But without responding to the treatment, he died. At the time of the occurrence, Gurumoorthi was working as a mason and earning not less than Rs.20,000/- per month. Claiming compensation amount of Rs.30,00,000/-, the dependants filed the claim petition.

3. That was resisted by the appellant herein, by filing counter contending that the deceased Gurumoorthi was travelling in the vehicle as one of the occupants. The first respondent's driver drove the vehicle under the influence of alcohol and caused the accident. Other customary denials were made. Apart from that it is also stated that the insurance is Act only policy. There is no comprehensive insurance. The first respondent stated that on the date of the occurrence, he was not the owner. He sold the property to one Dinesh @ Rajesh on 27.11.2015.

4. Before the Tribunal, on the side of the claimants, two (2) witnesses were examined and seven(7) documents were marked and on the side of the respondents, two(2) witnesses were examined and four(4) documents were marked.

5. Regarding the negligence aspect, no discussion is required, since the occurrence itself speaks about the rash and negligence on the part of the first respondent's driver. The vehicle was capsized on the left hand side. Against the driver of the vehicle a case was registered in Crime No.14 of 2019 for the

offences under Section 279, 337 and 304(A) of IPC. So the record of finding by the Tribunal on that aspect requires no interference.

6. It is the further contention on the part of the appellant that the first respondent vehicle driver was under the influence of alcohol. But no evidence was produced by the appellant to show the same. In the FIR it has been stated by the complainant that he was also one of the occupants of the vehicle. The driver, in the process of avoiding hitting a bullock cart, suddenly applied brake and because of that it capsized. There is no indication in the complaint that the first respondent vehicle driver was under the influence of alcohol. So without any basis, such a plea has been raised.

7. Regarding the compensation, the age of the deceased was fixed at 34 years. Notional income was fixed at Rs.11,000/- due to the absence of direct evidence of the monthly income of the deceased. To that 40% of Future Prospects was added. Since he was unmarried, half of the salary was deducted towards the personal expenses. Multiplier 16 was adopted and loss of income was estimated at Rs.14,78,400/-. To that, customary amounts were added. It arrived at the final assessment of Rs.15,51,400/- . Regarding the

liability, the Tribunal recorded a finding that on the date of occurrence, the first respondent in the main petition, namely the second respondent herein, was the registered owner of the property. Eventhough, delivery note was marked on the side of the second respondent herein, since it was not carried on to make certificate transfer, he is deemed to be the owner of the vehicle. Before this Court also, nothing was brought on record to show the transfer of registration certificate. So that portion of the finding requires no interference.

8. Regarding the liability, there is an issue. The Tribunal has recorded a finding that the insurance company collected premium of Rs.50/- each for unnamed five persons apart from the owner and driver. It is a personal accident coverage according to the appellant. So, the appellant company can be directed to pay only Rs.1 Lakh and not the entire compensation. That plea was rejected by the Tribunal. This has been challenged by the appellant herein. Eventhough, the evidence was let in by the appellant to the effect that Rs.50/- each for unnamed five occupants is collected, but perusal of the policy shows that a sum of Rs.3,263/- was collected towards third party premium. The column with reference to 'Compulsory PA cover for owner driver, unnamed persons, LL Cover for Paid Driver' is left blank. The premium

amount was only Rs.3263/-. To that GST amount was also added. Total premium amount was Rs.3851/-. The seating capacity is noted as 5. Policy was issued from 16.09.2018 at 12.00.01 AM to 15.09.2019 mid night. But some print out were taken from the integrated insurance management system which does not cover the material particulars of date of insurance, effective time and expiry time. It is noted that its expired or matured particulars which has no relevancy to the present certificate of insurance. It appears that by mistake, evidence has been let in by the appellant company. When it is evident on the face of the record, that no coverage was available to the occupant then the owner of the vehicle namely the second respondent is responsible to pay the compensation awarded by the Tribunal. To that extent, the award passed by the Tribunal is modified.

9. Accordingly, this Civil Miscellaneous Appeal, is partly allowed, modifying the award of the Motor Accident Claims Tribunal (Special District Court), Thanjavur, dated 21.11.2023 passed in M.C.O.P.No.508 of 2022 by directing the second respondent herein to deposit the entire amount and the appellant/ insurance company is exonerated from the liabilities. On such deposit the first respondent herein is at liberty to withdraw the same as per the

order of the Tribunal. No costs. Consequently, connected miscellaneous petition stands closed.

**08.07.2024**

NCC : Yes / No
Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal (Special District Court), Thanjavur.

2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

**G. ILANGOVAN, J.**

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