BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.703 of 2019
and
C.M.P(MD)No.8834 of 2019

United India Insurance Company,
No.63-C Palayamkottai Road,
Government Hospital OPP,
Tiruchendur. ... Appellant/Sole Respondent

Vs.

1.Muniyaammal

2.Minor Ramalakshmi

3.Minor Yogashini

4.Minor Yaswanthan

5.Minor Yugendran ... Respondents/Petitioners 1-5

(R2 to R5 represented by natural guardian and their mother Muniyaammal)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the order and decree, dated 15.04.2019 passed in M.C.O.P.No.196 of 2017 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate, Tirunelveli).

For Appellant : Mr.A.Shajahan

For Respondents : No Appearance

JUDGMENT

The present appeal has been filed by the Insurance Company challenging an award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli in M.C.O.P.No.196 of 2017 primarily on the ground of liability.

2. The claimants who are the legal heirs of one Muruganantham, have contended that the said Muruganantham is an auto driver aged 37 years. According to them, he was earning a sum of Rs.40,000/- per annum. While he was driving his auto on 12.03.2016, it met with an accident and he died in the said accident. The claimants have prayed for a compensation of Rs.4,36,172/-.

3. The insurance company has filed a counter contending that the accident has taken place only due to the negligence on the part of the auto driver. He being a totrfeasor, is not entitled to receive any compensation from his own insurance company.

4. The tribunal after considering the oral and documentary evidence on either side has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the deceased. However, the liability was mulcted upon the insurance company on the ground that the policy was subsisting on the date of the accident. Challenging the same, the present appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the appellant, the auto was owned and driven by the deceased person, namely Muruganantham. No other vehicle is involved in the said accident. The tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the deceased person. In such circumstances, the tribunal ought not to have mulcted the liability upon the insurance company.

6. Though the claimants have been served and their names are printed in the cause list, they have not chosen to appear either in person or through counsel.

7. I have carefully considered the submissions made on the side of the appellant and perused the material records.

8. A perusal of the claim petition reveals that the auto had capsized due to over load and the owner cum driver of the said auto had passed away in the said accident. The insurer of the auto has been shown as the sole respondent in the claim petition. The tribunal without considering the fact that the claimant cannot make a claim as against his own insurance company, has proceeded to pass an award as against the appellant insurance company. Therefore, the award passed by the tribunal is liable to be set aside.

9. A perusal of the policy indicates that the owner of the auto has paid premium towards personal accident policy. The personal accident coverage for the owner / driver is for a sum of Rs.2,00,000/-. Therefore, the insurance company is liable to pay a sum of Rs.2,00,000/- under the personal accident coverage.

10. In view of the above said facts, the award of the tribunal granting a sum of Rs.5,50,000/- (Rupees Five Lakh and Fifty Thousand

only) as compensation is hereby reduced to a sum of Rs.2,00,000/- (Rupees Two Lakh only). The said amount shall be shared by the claimants as per the apportionment made by the tribunal. Any excess amount deposited by the appellant insurance company shall be refunded along with accrued interest and cost.

11. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.06.2024

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

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To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate),
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.703 of 2019

20.06.2024