BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.460 of 2018
and
C.M.P(MD) No.5496 of 2018

TATA AIG General Insurance Company Limited,
Represented by it's Branch Manager,
Door No.A12, Ashok Complex,
3rd Floor, Thillai Nagar,
1st Cross Street.
Trichy – 18. ... Appellant/5th Respondent

-vs-

1. Raffa ... 1st Respondent/1st Petitioner

(1st Respondent is declared as major and the guardianship of R-4, Chittrai Hana and R-5, Hafif Mohammed Sidique is discharged vide common order dated 22.04.2024 made in C.M.P(MD) Nos.6050 and 6056 of 2019)

2. Minor Mohammed Kasim Afif

3. Minor Ahamed Mohideen

(Minor respondents 2 and 3 are represented by Court appointed following guardians R4 and R5)

4. Chittrai Hana

5. Hafif Mohammed Sidique ... Respondents 2 to 5/Petitioners 2 to 5

6. M.Suresh

7. Marappan

8. The Reliance General Insurance Company Limited,
Represented by its Assistant Legal Manager,
Door No. 15 A, PLA, Kanagu Tower,
Second Floor, Thillai Nagar,
Trichy – 18.

9. Grita Enterprise and Developers Private Limited,
Represented by its Director,
Door No.55,
Veerapathiram Street,
Nungambakkam,
Chennai – 600 034.

10. Thiayagarajan ... Respondents 6 to 10/
Respondents 1 to 4 and 6

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the decree and judgment dated 23.10.2017 made in M.C.O.P.No.49 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Court) Ramanathapuram.

For Appellant	: Mr.B.Vijayakarthikeyan
For Respondents	: Mr.S.Ramesh – for R1, R4 and R5 : Mr.V.Sakthivel – for R8 : No appearance – R6, R7, R9 and R10

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/fifth respondent challenging the award in M.C.O.P.No.49 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Court), Ramanathapuram, primarily on the ground of liability.

2. The deceased, namely, Yasin Suffiyan, was an employee in the fourth respondent Company in the claim petition as a Coordinator. While he was driving a Car, on 12.07.2012 at about 02.00 a.m., the driver of the lorry said to have proceeded in front of the Car had applied sudden brake. This has resulted in dashing of the Car as against the rear side of the lorry. Due to the impact of the said collusion, the driver of the Car had passed away. The legal heirs of the said Yasin Suffiyan had filed the claim petition seeking compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only).

3. The lorry driver had been impleaded as the first respondent, the lorry owner as the second respondent, the insurer of the lorry as the third respondent (Reliance General Insurance Company Limited), the owner of the

Car as fourth respondent and the insurer of the Car (TATA AIG Insurance) as fifth respondent in the claim petition.

4. The appellant/fifth respondent, namely, the insurer of the Car had filed a counter contending that the claimants are not entitled to any compensation as at the time of accident, the deceased had driven the Car and therefore, he cannot claim for compensation for his own negligence before their own Insurance Company.

5. The eighth respondent/third respondent Insurance Company, namely, the insurer of the Lorry had filed a counter contending that the Lorry was parked with blinking parking lights and therefore, the deceased person alone was responsible for dashing against the said parked vehicle, in view of the negligence and hence, they are not responsible to pay the compensation.

6. The Tribunal, after considering the evidence on either side, has arrived at a finding that the entire negligence is on the part of the driver of the Lorry. However, in the operative portion of the order, the Tribunal has fixed 50% of liability upon the deceased who was driving the Car and the balance 50% of liability on the driver of the Lorry. The Appellant/TATA AIG

Insurance Company, who is the insurer of the Car had filed this appeal challenging the said award.

7. The learned counsel appearing for the appellant had contended that when the Tribunal has arrived at a specific finding that the entire negligence is on the part of the driver of the Lorry, without assigning any reasons, 50% of liability ought not to have been imposed upon the driver of the Car who had passed away in the accident. He further contended that the deceased was not a paid driver of the Car, but he was engaged as a Coordinator in the 4th respondent Company. The Car was owned by the 9th respondent/fourth respondent Company. In such circumstances, premium has been paid only under I.M.T.No.28, which covers only a paid driver. In the present case, the deceased was an employee of the Company and he was not a paid driver of the Company at the relevant point of time. Unless premium has been paid under I.M.T.No. 29, the same does not cover the deceased person. In such circumstances, the Tribunal ought not to have fastened 50 % of liability on TATA AIG General Insurance Company, without properly appreciating the scope of policy which is marked as Ex.R1.

8. Per contra, the learned counsel appearing for the respondents 1, 4 and 5/claimants had contended that when the Tribunal has arrived at a specific finding that the driver of the Lorry was solely responsible for the accident and there was no negligence on the part of the driver of the Car, the Tribunal ought not to have imposed 50% of liability upon the driver of the Car and as a consequence, the liability is upon the appellant/Insurance Company.

9. The learned counsel appearing for the eighth respondent/third respondent had contended that as per the counter, the deceased was driving a Car so close to the lorry without maintaining any reasonable distance as contemplated under the Motor Vehicle Rules. In such circumstances, the Tribunal was right in fixing the 50% of negligence/liability upon the driver of the Car. However, this Court is not inclined to go into the issue relating to the contentions of the learned counsel appearing for the eighth respondent, namely, the Reliance General Insurance Company Limited, since that would be outside the scope of this appeal.

10. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

11. The Policy of the Car, which was driven by the deceased person has been marked as Ex.R1. A perusal of the Policy shows that it is a private Car package policy. The premium has been paid under I.M.T.Nos.7, 22 and 28. A perusal of the Indian Motor Tariff 2002 reveals that the premium paid under I.M.T No.28 provides coverage for the legal liability of paid drivers and/or Conductor or Cleaners employed in connection with the operation and/or maintenance of a motor vehicle. Admittedly, the deceased person was not a paid driver of the Car owned by the fourth respondent Company. A perusal of the Policy further reveals that no premium has been paid under I.M.T.No.29, which would cover the employee of the insured other than the paid driver or conductor or cleaner. Therefore, it is clear that the policy issued by the appellant/Insurance Company does not cover the person who is not a paid driver of the insured vehicle. In such circumstances, the Tribunal ought not to have fastened the liability on the insurer of the Car. On this sole ground, the appeal has to be allowed. However, whether the fixation of liability upon the driver of the Car, who had passed away in the accident is correct or not, is not gone into in the present appeal. This appeal is decided solely on the basis of the coverage of Ex.R1-Policy alone.

12. With the above said observation, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. However, though the appellant is exonerated, the liability would be upon the fourth respondent in the claim petition, namely, the owner of the Car to pay 50% of the compensation. Any award amount deposited by the appellant/Insurance Company shall be refunded forthwith along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

06.06.2024

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

1. The Motor Accident Claims Tribunal,
   (Principal District Court),
   Ramanathapuram.

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

R.VIJAYAKUMAR,J.

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