BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.02.2024**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.19 of 2024
and
C.M.P.(MD)No.311 of 2024

Reliance General Insurance Company Limited,
Through its Branch Office,
Sri Meenatchi Plaza, 1st Floor,
Plot No HIG-55, 80-Feet Road,
Anna Nagar, Madurai-624 202. ... Appellant

Vs.

1.V.Kittusamy,
2.K.Velammal
3.Sivamani
4.Subburaj ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 23.08.2023, passed in M.C.O.P.No.56 of 2021, on the file of the by the Motor Accident Claims Tribunal / Additional District Judge, Karur.

For Appellant	: Mr.V.Sakthivel
For R1 and 2	: Mr.K.Suresh
For R3 and 4	: No appearance

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JUDGEMENT

This Civil Miscellaneous Appeal is preferred by the Insurance Company. It is a case of fatal.

2. The contention of the Insurance Company is that the owner of the vehicle approached the Insurance Company for insuring the vehicle and issued cheque on 21.12.2018. However, the agreement was not completed. Further there was insufficient funds in the account of the owner of the vehicle, hence the cheque was returned on subsequent date and the agreement was cancelled on 06.02.2019. The accident occurred in between these dates i.e. on 14.01.2019. But it is settled proposition when the cheque was issued, the Insurance Company is liable. When the agreement was cancelled, the Insurance Company is entitled to pay and recover from the owner of the vehicle. However, the same was not considered by the Tribunal.

3. This Court is of the considered opinion that when the cheque was returned due to insufficient fund, the owner of the vehicle is liable to pay the compensation amount. Since there is no insurance as such, the Tribunal has failed to grant pay and recovery. Therefore, this Court is considering the plea of the

Insurance Company and is directing the Insurance Company to pay and recover from the owner of the vehicle / 4th respondent herein.

4.The next contention of the Insurance Company is that the Tribunal has failed to fix the contributory negligence on the deceased person. The accident occurred at 05:30 AM and the deceased hit at the backside of the lorry. It is also admitted that the deceased died due to head injuries and he failed to wear helmet as well. Therefore, contributory negligence ought to be fixed on the deceased. However, the learned Counsel appearing for the claimants submitted that the lorry was parked but there was no indication at all that the lorry was parked. Especially the lorry driver had not put on the light indicating that the lorry had been parked. Therefore, entire contributory negligence cannot be fixed on the deceased.

5. After hearing the arguments of both sides, this Court is of the considered opinion that the deceased has hit the parked lorry behind it, so contributory negligence should be fixed on the deceased as well. In the present case, when the parked vehicle was not having the parking light and signal, a portion of contributory negligence should be fixed on the lorry. Therefore, it would be sufficient to fix the contributory negligence on the deceased as 25%. From the

total compensation 25% is reduced. So, the total compensation awarded by the Tribunal (Rs.16,32,000/-) is reduced to Rs.12,24,000/- by this Court. In the result, the appellant/Insurance Company is directed to pay the amount of Rs.12,24,000/- at the first instance and then, recover the same from the owner of the vehicle/ 4th respondent herein.

6. The appellant Insurance Company shall deposit Rs.12,24,000/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The appellant Insurance Company is entitled to recover the same from the owner of the vehicle / 4th respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)***. The Insurance Company shall withdraw the excess amount, if any.

7. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2024

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

Tmg

To

1.Motor Accident Claims Tribunal /
Additional District Judge, Karur.

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

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.19 of 2024

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