IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2906 of 2011

M/s.Cholamandalam MS General
Insurance Company Ltd.,
No.551, DB Road, R.S.Puram,
Coimbatore 641 002. ..Appellant/2nd respondent

Vs.

1. Madeswaran ..1st Respondent/Petitioner
2. T.Kumar ..2nd Respondents/1st Respondent
(2nd respondent set exparte)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.04.2011 made in M.C.O.P No.178 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellant	:	Mr.N.Vijayaraghavan
For 1st Respondent	:	Mr.Ma.Pa.Thangavel
R2	:	Exparte

J U D G M E N T

The Insurance Company has come up with this appeal challenging their liability to compensate the claimant for the death of his mother.

2. On 25.03.2005, about 21.30 hours, the deceased Lakshmi was travelling along with one Kunjammal and Ponni @ Ponnammal in a LMV Three-wheeler GC bearing Registration No.TN 28 L 2851 and in the capacity of owner of the goods, the same was driven by the owner, the 2nd respondent herein. While so, when the driver of the Mini Door Auto applied sudden brake, a Lorry which was coming from behind dashed the auto and caused the accident. Resultantly, the said Lakshmi sustained head injury and grievous crush injuries all over her body. Though she was taken to Government Hospital at Erode for treatment, she died on the same day. Seeking a sum of Rs.5,00,000/- as compensation for the death of his mother, the 1st respondent/claimant filed a claim petition before the Tribunal. According to the claimant, at the time of accident, his mother Lakshmi was aged 50 years, earning a sum of Rs.6000/- per month by doing vegetable vending business.

3. The Tribunal, on consideration of the oral and documentary evidence on record, held that the accident occurred due to the rash and negligent driving of the driver of the Lorry. Since, neither the owner of the Lorry nor the Insurer of the Lorry was impleaded as a party in the claim petition and as the claim is made against the Mini Door Auto in which the deceased was travelling at the time of accident, the Tribunal held that the owner as well as the Insurer of the Mini Door Auto are jointly and severally liable to compensate the loss under 'no fault liability' and awarded a sum of Rs.50,000/- as compensation to the claimant.

4. Learned counsel for the appellant/Insurance Company contended that the Tribunal grossly erred in awarding 'no fault liability' on the appellant/Insurance Company, when the deceased was travelling as a gratuitous passenger in the goods vehicle and not covered under the Insurance Policy vide Ex.R4.

5. In reply, learned counsel appearing for the 1st respondent/claimant submitted that the Tribunal is right in fixing 'no fault liability' on the appellant/Insurance Company and that the appellant can recover the compensation from the owner of the Mini Door Auto after paying the same to the claimant.

6. Admittedly, the claimant's mother viz. Lakshmi travelled as a gratuitous passenger in the Mini Door Auto driven by the 2nd respondent herein, who is also the owner of the vehicle. Since the owner as also the Insurer of the Lorry in question were not impleaded as parties to the claim petition, the onus to compensate the claimant lies with the owner or Insurer of the Mini Door Auto.

7. In several decisions of the Supreme Court, it has been held that Gratuitous passengers are covered by third party risk. In the case on hand, the Tribunal has awarded a meagre sum of Rs.50,000/- as compensation under 'no fault liability'. Hence, this Court is of the view that the appellant/Insurance company shall pay the entire amount awarded by the Tribunal along with accrued interest to the claimant and recover the same from the owner of Mini Door Auto.

8. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the liability as also the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. It is made clear that if no amount is deposited so far, the appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest to the credit of M.C.O.P.No.178 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the

form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

aeb

To :

The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

+1cc to Mr.N. Vijayaraghavan, Advocate, S.R.No.14807
+1cc to Mr.Ma.P. Thangavel, Advocate, S.R.No.14590

RV(CO)
EU(09/12/2016)

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