

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.364 of 2003

The Branch Manager,
United India Insurance Co.Ltd.,
Salem. .. Appellant/ 2nd Respondent

Vs.

1. R.Savithri
2. R.Vijayalakshmi
3. R.Thenmozhi (Minor)
4. R.Venkatesan (Minor) ...Respondents 1 to 4/ Petitioners
5. K.Kannan. ...5th Respondent/ 1st respondent
(Minors R3 and R4 are rep by their mother R1)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgement dated 15.02.2002 in M.A.C.T.O.P.No.17 of 1997 on the file of Motor Accidents Claims Tribunal (Principal Sub-Judge), Nagapattinam.

For Appellant : Ms.R.Sree Vidhya

For RR1 to 4 : Mr.Ma.P.Thangavel

For M/s.V.Kathiravan

J U D G M E N T

The Insurance Company, which is arrayed as the second respondent before the Tribunal has come forward with this appeal, challenging the liability causing on it in the award arising from M.C.O.P.No.17 of 1997 on the file of the Motor Accidents Claims Tribunal [Principal Sub Court, Nagapattinam].

2. On 09.12.1993, goods carrier bearing no.TCH 7994 belonging to the first respondent insured with the appellant capsized due to which, one Rajarathinam died and another was injured. The FIR which is marked as Ex.P1 in this case states that there were 16 persons travelling in the goods carrier at the relevant time.

3. Before the Tribunal, the Insurance Company had contended that there was no insurance cover for carrying passengers in the goods vehicle and denied the liability as against the claim of Rs.3,00,000/-, the Tribunal awarded a sum of Rs.2,47,000/- payable with interest at 12% per annum.

4. Taking this Court to Ex.R1 Insurance Policy, the learned counsel submitted that vehicle in question is admittedly a goods-vehicle that the policy indicates it covered only two persons in the cabin and another six coolies and that there was no policy cover for non-fare paying passengers. This was strongly contested by the learned counsel for the claimant/respondents 1 to 4.

5. A perusal of the relevant materials available on record indicates that the deceased was a vegetable vendor and that he was travelling in the vehicle along with vegetables as the owner of the goods taken in the vehicle. It need not be forgotten that the accident had taken place some 23 years ago and it would be a travesty of justice to deny the claimant the compensation that he justly entitled to on pleas of technicalities.

6. I find no merit in the appeal and the same is dismissed without costs. It is submitted that the appellant had already deposited the entire amount awarded by the Tribunal and the part of the amount has already been withdrawn by the claimant. The claimants who are entitled to receive the balance award amount now in the Court are permitted to withdraw the same forthwith.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kmi

To

1. Principal Sub-Judge,
Motor Accidents Claims Tribunal,
Nagapattinam.

2. The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc to Mr. Veerakathiravan, Advocate, Sr. 72559
1 cc to Mrs.R. Sreevidhya, Advocate, SR. 72868

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CA(CO)
kk 25/1