



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.66 of 2013

WEB COPY

1.Pandiammal
2.Karuppasamy
3.Minor.Murugan
4.Minor.Singaraja

.. Appellants/Claimants

-Vs-

1.Veerana

2.The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
No.555/1, Government Hospital Road,
Theni,
Theni District.

.. Respondents/Respondents

(Minor 3 & 4 rep. by their mother
and natural guardian, the first appellant herein)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 13.04.2009 passed in M.C.O.P.No.117 of 2007 the Motor Accident Claims Tribunal (Principal District Court), Dindigul.

For Appellants : Mr.A.Thiruvadikumar
For R - 2 : Mr.K.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Judgment and Decree, dated 13.04.2009, in M.C.O.P.No.117 of 2007 passed by the Motor Accident Claims Tribunal (Principal District Court), Dindigul.

2.It is a case of fatal accident caused in the accident, which took place on 09.02.2006 near South of Ayyankovil. The heirs of the deceased filed an application before the Motor Accident Claims Tribunal (Principal District Court), Dindigul, in M.C.O.P.No.117 of 2007 and the Tribunal, considering the facts and circumstances of the case, awarded a sum of Rs.2,14,000/- as total compensation. The appellants/claimants have preferred the present Civil Miscellaneous Appeal on the ground that the Tribunal has fixed the liability upon the first respondent and exonerated the Insurance Company from liability.

3.The learned counsel for the appellants/claimants submitted that the Tribunal ought to have directed the second



respondent/Insurance Company to pay compensation and recover the same from the first respondent. But the Tribunal has totally fixed the liability upon the first respondent.

4. The learned counsel appearing for the second respondent/Insurance Company opposed the appeal by stating that the Insurance Company is not liable to pay compensation in view of the fact that the deceased was travelling in the mudguard of the Tractor and second respondent/Insurance Company is totally exempted from liability.

5. The fact of the matter is that the deceased was travelling on the Tractor by sitting near by the driver. On reading of the entire evidence of the Tribunal, it is made clear that the deceased was not travelling in the trailer and he was travelling in the Tractor. Travelling in the Tractor is illegal and he has to be considered as gratuitous passenger. Further, the claimants are unable to prove that the deceased was travelling in the trailer attached with the Tractor. Contrarily, the findings of the Tribunal is that the deceased fell down from the Tractor and the front wheel of the trailer over run and caused death. Therefore, the fact is very clear that the deceased was sitting in the Tractor and not in the Trailer.

6. In view of the factual position, the second respondent/Insurance Company is not liable to pay compensation, since the person, who was travelling in the Tractor, is not covered under the policy. Therefore, this Court is not inclined to decide in respect of the liability on the side of the second respondent/Insurance Company and consequently, the award, dated 13.04.2009, in M.C.O.P.No.117 of 2007 passed by the Motor Accident Claims Tribunal (Principal District Court), Dindigul is confirmed and the Civil Miscellaneous Appeal is dismissed. The appellants/claimants are entitled to recover the award amount as per the award of the Tribunal from the first respondent/owner of the vehicle in accordance with law. No costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal

(Principal District Court), Dindigul.

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate, SR No.73940

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