IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.974 of 2017
and
C.M.P.No.4851 of 2017

Shriram General Insurance Co. Ltd.,
No.10003-E-8, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan - 302 022. ... Appellant/3rd Respondent

vs.

1. Savithri
2. Minor Saravani
3. Minor Manoj Kumar
4. Lakshmi Devamma ... Respondents/Petitioners
5. D.M.Ramasamy ... Respondent/1st Respondent
6. T.Nazreenthan ... Respondent/2nd Respondent

[Minors 2 and 3 are represented by their next friend mother Savithri]

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP No.946 of 2013 dated 31.03.2015 on the file of Motor Accidents Claims Tribunal, [Special District Court], Krishnagiri.

For Appellant : Mr.S.Dhaksanamoorthy

J U D G M E N T
[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 05.01.2011, husband of the 1st respondent, travelling as owner of the goods along with two others, in a canter vehicle bearing registration No.KA-08-2174, died, due to the rash and negligent driving of its driver. Bagalur police has registered a case in Cr.No.10 of 2011 under the Sections 279 and 304(A) IPC against the driver.

2. Claiming compensation of Rs.20 Lakhs, wife, two minor children and mother preferred MCOP No.946 of 2013, on the file of the MACT [Special District Judge], Krishnagiri. Shriram General Insurance Company Limited, appellant herein denied the

manner of accident. Company further contended that the deceased travelled as an unauthorised passenger. It is a violation of policy condition and therefore, insurance company is not liable to indemnify the owner.

3. Supporting the same, insurance company has examined RW1, legal officer of the insurance company and marked Ex.R2, photostat copy of the investigation report.

4. On the contra, respondents/claimants, adduced evidence through PW1, wife and PW2, stated to be a co-occupant in the canter vehicle, bearing Regn.No.KA-08-2174, to contend that the deceased travelled as owner of goods. During cross examination, RW1, legal officer of Insurance company had admitted that the offending vehicle contained paddy load. He further admitted that he had not made any enquiry about the owner of the paddy, carried in the vehicle.

5. Evaluating the oral and documentary evidence adduced, the tribunal fastened liability on Shriram General Insurance Company to pay compensation to the legal representatives of the deceased and quantified, the same as Rs.15,65,000/- with interest at the rate of 7.5% per annum from the date of claim, till realisation and costs, as hereunder.

Future loss of income	: Rs.12,15,000/-
Loss of consortium for the first petitioner, who had lost her husband for the rest of her life	: Rs. 1,00,000/-
Loss of love and affection to the minor, Petitioners 2 and 3, who had lost their father, parental care and guidance in their future life (Rs.1,00,000/- x 2)	: Rs. 2,00,000/-
Loss of love and affection to the fourth petitioner, who had lost her son in the evening of her life	: Rs. 20,000/-
Transport to Hospital	: Rs. 10,000/-
Funeral Expenses	: Rs. 20,000/-
Total	: Rs. 15,65,000/-

6. Though Mr.S.Dhakshnamoorthy, learned counsel for Shriram General Insurance company, assailed the correctness of the impugned judgment on the grounds inter alia that the tribunal failed to appreciate that the deceased did not travel in the cabin and travelled only on the top of the goods and therefore, the tribunal ought to have held that the deceased travelled only as an unauthorised passenger and therefore, Shriram General Insurance company, appellant herein ought to have been exonerated from its liability to pay compensation to the legal representatives of the deceased, this Court is not inclined to

accept the same for the reason that both PW1, wife, and PW2, a co-occupant, have categorically deposed that the offending vehicle, carried paddy load and that the deceased travelled as the owner of the goods.

7. Ex.R2, investigation report, cannot be relied on, unless and until Shriram General Insurance company, appellant herein, persons from whom statements have been obtained for the purpose of drawing the investigation report, have been examined. Added further, in the cross examination, investigation officer has candidly admitted that, at the time of accident the offending vehicle contained paddy and he had not enquired about the ownership of paddy. Therefore, the said report cannot be given any credence for drawing an inference that the deceased travelled as a gratuitous passenger. Further contention that he travelled on the top of the goods and not in the cabin, cannot be accepted, as no credence is given to the report.

8. Contention of the insurance company that the deceased travelled on the top of the goods, has not been substantiated. On the contra, respondents/claimants have proved that the deceased travelled as owner of the goods. In the light of the above discussion the only objection made by Shriram General Insurance Company, appellant herein does not merit any consideration. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

9. Consequent to the dismissal of the appeal, the appellant-Insurance Company, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim and costs, of this appeal, to the credit of MCOP No.946 of 2013 dated 31.03.2015 on the file of Motor Accident Claims Tribunal, [Special District Court], Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order.

10. Respondents 2 and 3 were minors at the time of filing of the claim petition. On such deposit being made, except minors, the respondents/claimants 1 and 4 are permitted to withdraw their share, as apportioned by the tribunal, by making necessary applications. The share apportioned to the minors/respondents 2 and 3, shall be in the bank deposit till they attain majority. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On attainment of majority, they shall file necessary applications for withdrawal.

11. Registry is directed to send a copy of this order to the Motor Accident Claims Tribunal [Special District Judge], Krishnagiri, and display in the notice Board that C.M.A.No.974 of 2017 filed by the Shriram General Insurance Company Limited, Rajasthan, against the judgment in MCOP No.946 of 2013, has been

dismissed, with a direction, to the Insurance Company, to deposit the entire award amount, to the credit of MCOP No.946 of 2013 on the file of Motor Accident Claims Tribunal, [Special District Court], Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. Motor Accident Claims Tribunal is further directed to mention the M.C.O.P number in the said notice. The Tribunal is directed, to disburse the amount only on proper identification and proof.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
(Special District Court), Krishnagiri - is directed to
affix the details of the order made in this appeal
in the Notice Board.

C.M.A.No.974 of 2017
and
C.M.P.No.4851 of 2017

NRI(CO)
CA(05/05/2017)