IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A.No.1353 of 2010
and C.M.P.No.6745 of 2016
and M.P.No.1 of 2010

The Manager,
National Insurance Co.,Ltd.,
N.S.No.7, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai.
.. Appellant/3rd Respondents

/Vs/

1.Geetha @ Thanigai

2.Minor. Sathya
Rep. through her mother and next friend, 1st respondent — 1st and 2nd Respondents/ Petitioners

3.Rathnasabapathy

4.A. Govindasamy — 3rd and 4th Respondents/1st and 2nd Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.02.2008 made in M.A.C.T.O.P.No.44 of 2004 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Hosur.

For Appellant : Mr.S.Vadivel

For Respondent Nos.1 & 2 : Mr.J.Nandagopal

For Respondents No.3 & 4 : Ex-parte

JUDGMENT

The appeal filed by the Insurance Company, challenging the order passed by the Claims Tribunal directing the Insurance company to pay the compensation to the claimants and thereafter, to recover the amount from the owner.

2. The contention of the learned counsel for the Insurance company is that the Insurance company should have

been totally exonerated from the liability to pay the compensation and the same contention was raised before the Claims Tribunal also.

3. It was the case of the claimants that the deceased Venkatesan was travelling in the mini lorry in the capacity of owner of the goods, the goods being coconuts. Further, it was the contention of the claimants that the Insurance Company is liable to pay compensation for the death of the deceased, as the death of the deceased has been covered under the terms and conditions of the policy. The specific contention is that the deceased being the owner of the goods is entitled to travel along with the goods and persons travelling along with goods are covered under the terms and conditions of the policy and therefore, the Insurance Company is liable to pay compensation.

4. The fact that the deceased had been travelling as the owner of the goods had been mentioned in the first information report also. The tribunal has relied upon the decision in the case of The National Insurance Co., Ltd., Vs. Kannan and others reported in 2007 (5) C.T.C. 83.

> " Liability of Insurer - Gratuitous passenger travelling in lorry - following principles laid down by supreme court, insurer directed to pay and recover from owner.
>
> Motor Vehicles Act, 1988 (59 of 1988) Section 147 - Expression "any person" referred to includes only owner of goods or his authroised representative - Gratuitous passengers are not covered - Insurance companies to satisfy claim of compensation awarded and recover same from respective owners - No separate suit need he filed and amount can be recovered by initiation of executive proceedings."

5. In this case also, the contention of the Insurance company that the deceased was a gratuitous passenger has not been proved. So far as the owner of the vehicle is concerned, he has remained ex-parte before the tribunal and the owner did not challenge the order of recovery. Perusal of the order of the claims tribunal would show that no reason had been adduced as to why the insurance company would be entitled to recover from the owner. Even then, the Insurance company filed this appeal in the absence of the owner, challenging the order passed by the claims tribunal directing the Insurance company to pay the compensation, thereafter, to recover the amount from the owner.

6. Thus, the appeal has no merits and the same is dismissed confirming the award of the Tribunal. No costs.

consequently, connected miscellaneous petitions are closed.

7. The appellant/Insurance Company is directed to deposit the entire award amount, along with interest at 9% per annum from the date of petition till the date of deposit and costs, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount of Rs.2,45,000/- along with proportionate and accrued interest directly to the bank account of the first claimant/first respondent through RTGS within a period of two weeks thereafter. Since the second claimant is a minor, her share amount of Rs.1,50,000/- along with interest shall be deposited in interest bearing fixed deposit scheme in any one of the Nationalised Banks till she attains majority and the mother of the minor claimant would be entitled to withdraw the interest accruing thereupon once in three months.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms/kv

To

1. The Motor Accident Claims Tribunal
   (Subordinate Court) Hosur.

2. The Section Officer, VR Section,
   High Court, Madras.

+1cc to Mr.J.Nandagopal, Advocate, S.R.No.54813
+1cc to Mr.S.Vadivel, Advocate, S.R.No.54565

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SJ(CO)
GN(27/10/2017)