

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM : THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CMA.No.1541 of 2003
and CMP.Nos.10018 & 10019 of 2003

The Branch Manager,
United India Insurance Co. Ltd.,
Ranipettai.

..Appellant/3rd respondent

Vs.

1.Kothandam
2.S.Shanmugam
3.V.Alagesan
(2nd respondent given-up)

..Respondents/Petitioners
Respondents 1&2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 31.12.2002 made in MACTOP No.1272 of 1995 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Vellore.

For Appellant :Mr.D.Bhaskaran

For Respondents:Mr.C.Prabhakaran &
Mr.M.S.Sivakumar [for R1]

JUDGMENT

The Insurance Company challenges the liability fastened on it by the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Vellore, when it directed the Insurance Company along with third respondent, the owner of the lorry, to pay compensation to the claimant who had at that relevant time was travelling in the lorry and suffered injury in a road accident. The accident had taken place on 12.03.1995 at about 7.00 p.m. in Vellore-Arni Road. Seeking compensation on various heads the claimant approached the Tribunal with a claim of Rs.2,00,000/-, against which the Tribunal has passed an award for Rs.1,50,000/- payable with interest @ 9% per annum.

2. The only point argued before the Court by the learned counsel for the appellant was that the Insurance Company was not liable inasmuch as the claimant was an unauthorised passenger in a goods carrier for which there is no policy cover. He added that this point was raised even before the Tribunal and the very FIR registered in this case would indicate that there were about 40 persons travelled in the lorry concerned and that they were proceeding for a marriage. He added that the Tribunal has not pointedly considered this aspect of defence, but proceeded to fastened the liability on it.

3. The accident had taken place 22 years from now and the appeal itself is now pending for close to 14 years, yet service of notice to second and third respondent, the driver and the owner of the vehicle was not completed. In view of the same, I do not want to prolong the agony of the claimant and do not inclined to interfere with the award.

4. The records of the case are perused. It appears as an admitted case that some 40 persons were travelling in the lorry at that relevant time, and going by the testimony of P.W.1, he and others were travelling to go for a betrothal ceremony. It is a settled position of law that the Insurance Company is not liable to pay compensation for death or injury of a passenger in his carriage. But nothing in law restrains the Insurance Company to offer additional cover on receipt of additional premium. This will be disclosed only by the policy of insurance, but the appellant has not produced any Insurance policy. Hence, I find the appellant's contentions are devoid of merits.

5. In the result, the appeal is dismissed. No costs. The learned counsel for the appellant submitted that the compensation amount has already been deposited and 50% of the said amount is said to have been withdrawn by the claimant. The claimant is permitted to withdraw the remaining portion of the amount forthwith. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To

1.The Motor Accidents Claims Tribunal,
(Additional District Judge-cum-Chief
Judicial Magistrate), Vellore.

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

+ 1 cc to Mr.C. Prabhakaran, Advocate Sr.1710

+ 1 cc to Mr.D. Bhaskaran, Advocate Sr.1779

CMA.No.1541 of 2003

MSM(CO)

Eu 22.2.17