



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.658 of 2015
and
M.P.(md).No.1 of 2015

The National Insurance Company Limited,
Represented by its Manager,
Anguvilas Building,
North Car Street,
Nagercoil, Kanyakumari District. ... Appellant
Vs.

1.Nakshadram
2.Chandrika
3.Maheswari
(Amended as per order in I.A.No.134/2009
dated 05.09.2009)
4.Lawrance
5.Palayyan ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988,
to set aside the fair and decretal order dated 21.07.2010 made in
M.C.O.P.No.12 of 2003, on the file of the Motor Accident Claims
Tribunal/(Sub Court), Kuzhithurai.

For Appellant : Mrs.K.R.Shiva Shankari
For Respondents : Mr.M.P.Senthil for R1 to R3
No Appearance for R4 and R5

JUDGMENT

Heard the learned counsel on either side.

2.The insurer has filed this appeal, questioning the impugned
award principally on the ground of liability.

3.One Suseelan, aged about 23 years, was travelling in a goods
vehicle insured by the appellant on 09.04.1997 at about 11.30 A.M.
The vehicle was driven in a rash and negligent manner. On account
of such driving, the deceased fell down from the vehicle and
sustained injuries and died on the same day. Crime No.315 of 1997
was registered on the file of the Kaliyakkavilai Police Station.
The appellant had also filed final report and the said case was
charge sheeted and taken on file as C.C.No.65 of 1997. The driver
of the Mahindra Tempo admitted his guilt and paid the fine.



4.The Tribunal found that the accident took place on account of the negligence of the driver of the goods vehicle. The said finding was arrived at after considering the materials on record. I do not want to interfere with the said finding.

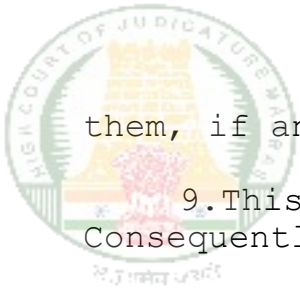
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5.The learned counsel appearing for the appellant contended that the deceased was only a mason. Therefore, it must be taken that he was travelling in the goods vehicle only as an unauthorized passenger. The Insurance Company policy covering the said vehicle was intended to cover the owner, driver, cleaner and load man. The deceased would not come under any of those categories. He placed reliance on the decision of this Court reported in 2012 (1) TN MAC 89 (DB). *Royal Sundaram Alliance General Insurance Company Limited Vs. P.Ayyakannu*. But, in the present case, it is seen that the deceased was working as a mason. The claimants have stated in the claim petition that he was working under One Thankamony, who was a building contractor. The vehicle was being taken to a saw mill. The deceased was sitting on the top of the loaded timber. From all this, one can come to the safe conclusion that the deceased was also acting as a load man. Admittedly, the policy covers the load man also. The Tribunal on an appreciation of the evidentiary material on record came to the conclusion that the deceased can also be treated as a load man.

6.In Paragraph 8 of the impugned award, the Tribunal referred to the evidence of Thankamony, who was examined as PW2. The said PW2 deposed that the deceased was working under him and on the fateful day, he loaded timbers in the said vehicle at Kaliyakkavilai and travelling to Vanniyacode for his construction purpose. The timber loaded in the vehicle belonged to PW2. That is why, he had accompanied the case for unloading the timber. Therefore, the contention of the learned counsel for the appellant that the deceased must be taken as a gratuitous passenger cannot be accepted. I sustain the finding of the Tribunal that the deceased travelled in the goods vehicle only as a load man. Therefore the accident is squarely covered by the terms of the insurance policy. The appellant Insurance company is bound to compensate the claimants. The reasons assigned by the Tribunal for passing the impugned award are sound.

7.The award dated 21.07.2010, made in M.C.O.P.No.12 of 2003, on the file of the Motor Accident Claims Tribunal/(Sub Court), Kuzhithurai is confirmed.

8.The appellant is directed to deposit the compensation amount of Rs.3,74,500/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by



them, if any, by filing proper application before the Tribunal.

9.This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/True copy/

Sub Assistant Registrar

To

1.The Sub Judge,
The Sub Court,
The Motor Accident Claims Tribunal, Kuzhithurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1cc to Mr.S.SRINIVASA RAGHAVAN,Advocate,SR.90477

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