



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.12.2017
CORAM

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) .No.984 of 2016
and
C.M.P. (MD) No.8841 of 2016

The Oriental Insurance Company Limited,
Divisional Office, Palakad,
Sofa T.M.S.Complex Buildings,
R.S.Road, Town Railway Station Opposite,
Palakkad, Kerla District.

... Appellant/2nd Respondent

Vs.

- | | |
|--|---|
| 1.Chinnammal | ... Respondent No.1/Petitioner No.1 |
| 2.V.Selvi | ... Respondent No.2/Petitioner No.2 |
| 3.V.Rajammal | ... Respondent No.3/Petitioner No.3 |
| 4.V.Vellaiammal | ... Respondent No.4/Petitioner No.4 |
| 5.V.Manjammal | ... Respondent No.5/Petitioner No.5 |
| 6.Minor.V.Periasamy | ... Respondent No.6/Petitioner No.6 |
| 7.Minor.V.Muthusamy | ... Respondent No.7/Petitioner No.7 |
| 8.Minor.V.Lakshmi | ... Respondent No.8/Petitioner No.8 |
| 9.N.Thatchammal | ... Respondent No.9/Petitioner No.9 |
| 10.V.Nallan Ambalam (Died)
(Minor Respondents 6,7,8
represented through their
Mother Respondent No.1) | ... Respondent No.10/ Petitioner No.10 |
| 11.P.Rajangam | ... Respondent No.11/1 st Respondent |

Prayer:- This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.577 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Dindigal, dated 25.07.2013.



For Appellant	: Mr.C.Ramachandran
For R1 to R8	: Mr.K.Kumaravel
For R9	: No appearance
For R10	: Died
For R11	: Mr.N.Sathish Babu

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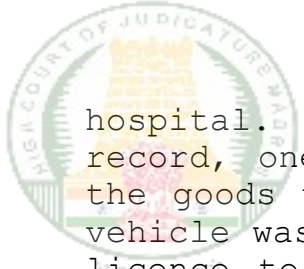
JUDGMENT

Heard the learned counsel on either side.

2.The insurer is the appellant in this case. The impugned award is questioned on the ground of liability. One Vellaikalai @ Vellaismy, had travelled in a goods vehicle, on 21.07.2009. At about 08.00 A.M. near Peyampatty on the Mankatoor to Aravangurichi Road, the vehicle which belonged to one Rajangam and insured with the appellant herein. The said Vellaikalai @ Vellaismy died in the accident. His Legal Representatives filed M.C.O.P.No.577 of 2010, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Dindigal, dated 25.07.2013. The Tribunal awarded a sum of Rs.6,00,000/- as compensation.

3.The insurer contended that the deceased was travelling only as a gratuitous passenger. Therefore, the insurance policy will not cover the instant case. But a reading of the materials on record would show that the deceased was waiting in the Kodukupatti bus stop. The goods vehicle insured with the appellant was passing by. The same was stopped and after finalizing the freight charges they have loaded the coconut bags. Thus, the said Vellaikalai @ Vellaismy had travelled in the goods vehicle only in the capacity of the load man in the vehicle. The TATA Ace van will have a seating capacity of four persons. Therefore, the said Vellaikalai @ Vellaismy cannot be said to be an unauthorised passenger. Even in Ex.P.1 i.e. FIR, it is mentioned that the deceased and P.W.2, got into the goods vehicle after finalising the freight charges. Merely because, the coconut bags are not mentioned in the FIR, one cannot come to the conclusion that the deceased travelled only as a gratuitous passenger. The vehicle owner has chosen to deny the entire version of the claimants.

4.According to the vehicle owner, the vehicle was not involved, in the alleged accident. This is clearly false as per Ex.P4, the Motor Vehicle Inspector Report. The vehicle had suffered damage as a result of capsizing. It is thus clear that the vehicle was actually involved in the accident. It is quite possible that the vehicle was driven by one Pandidurai, who was not having a valid driving licence. Since the vehicle owner became aware that there has been a breach of policy condition and that he would ultimately be saddled with the liability to satisfy the award, he has chosen to take the stand that his vehicle was not at all involved in the accident. He even projected the theory that the deceased fell down from a tree and suffered injuries and died. The vehicle owner admits in the cross-examination that he only admitted the deceased in the



hospital. From a cumulative reading of the entire evidence on record, one can come to the conclusion that the deceased got into the goods van carrying load, namely, the coconut bags and the said vehicle was driven by Pandidurai, who has not having a valid driving licence to drive the said vehicle. But, in this case, even though the insurer has taken a plea that the driver of the goods vehicle was not having a valid driving licence, it appears that the same was not projected before the Tribunal. Probably that is why the Tribunal has not given any finding as to whether the driver of the goods vehicle was having a valid driving license or not. In the grounds of appeal, this aspect of the matter has not been canvassed. The insurer has rested his entire case on the ground that the deceased was travelling only as a gratuitous passenger. Since I had already given a finding that the deceased was travelling not as a gratuitous passenger, but as the owner of the goods. I am not inclined to interfere with the impugned award.

5. Therefore, the award dated 25.07.2013, made in M.C.O.P.No.577 of 2010, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Dindigal, is confirmed.

6. The appellant/Corporation is liable to pay the said sum of Rs.6,00,000/- with interest at 7.5% per annum and cost 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 judgment, less the amount already deposited, if any. On such deposit, the claimants/respondents 1 to 5 and 9 are entitled to withdraw the entire amount, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The share of the minor claimants 6, 7 and 8 shall be deposited in any one of the Nationalized Bank till they attained majority. The natural guardian, the First respondent is permitted to withdraw the interest there from once in three months directly from the Bank.

7. This Civil Miscellaneous Appeal is dismissed accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Additional District and Sessions Court,



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

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Copy to

N.Thatchammal,
W/o Nallan Ambalan,
Plot No.3/69,
S.No-2, Sivan Koil 1st Street,
Manathakulathupatti Post,
Kotankipatti,
Natham Taluk,
Dindigal District.

+1CC to Mr.K.Kumaravel Advocate in SR.No.91732.

+1CC to Mr.N.Sathish Babu Advocate in SR.No.91796.

TSG/LS

DS/JC/SAR-2 :27.06.2018: 4P/7C

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