



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.148 of 2011

- 1.Navanammal
- 2.Manimekalai
- 3.Alagumani
- 4.Anandharaja
- 5.Minor Rajamani
- 6.Minor.Mathavanraja

(Minor appellants 5 and 6
are represented by their mother
and natural guardian the 1st
appellant herein)

...Appellants/Petitioners

Vs.

1. P.Elangovan

2. Bajaj Allianz General Insurance Co.Ltd,
No.108, T.P.K.Road,
Kadhi Bhavan 2nd Floor,
Madurai - 625 001.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the award and decretal order dated 29.09.2010 made in MCOP.No.328 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Dindigul and grant enhanced amount of compensation with a direction to the second respondent herein / Insurance Company to pay the compensation to the appellants / claimants at the first instance with a liberty to them to recover the same from the first respondent / owner of the vehicle.

For Appellants : Mr.A.Saravanan

For R-1 : No Appearance

For R-2 : Mr.S.Srinivasa Raghavan

J U D G M E N T



Tribunal, Additional District and Sessions Judge, Fast Track Court, Dindigul, passed in M.C.O.P.No.328 of 2009, dated 29.09.2010.

2.It is the case of fatal accident, which took place on 18.11.2008 at about 11.30 hours on Nilakottai to Anaipatti road near Kalkottai branch.

3.It is the case of the claimants before the Tribunal that when the deceased namely M.Kattapomman was travelling with luggage in TATA Ace vehicle bearing Registration No.TN-76 B-1127, the driver drove the vehicle in a rash and negligent manner and dashed against a roadside tree near Kalkottai branch on Nilakottai to Anaipatti road and as a result the deceased died on the spot.

4.The claimants filed an application in M.C.O.P.No.328 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fast Track Court, Dindigul, seeking compensation.

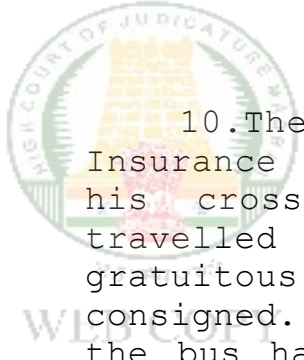
5.Before the Tribunal, the appellants/claimants examined two witnesses as P.W.1 and P.W.2 and marked three documents as Ex.P.1 to Ex.P.3. On the side of the respondents, three witnesses were examined as R.W.1 to R.W.3 and marked six documents as Ex.R.1 to Ex.R.6.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the vehicle bearing registration No.TN 76 B-1127 and therefore directed the first respondent to pay a sum of Rs.3,98,000/-to the claimants as compensation.

7.Against which, the appellants/claimants filed the present appeal seeking enhancement of compensation with a direction to the second respondent/Insurance Company to pay the compensation to the appellants/claimants and recover the same from the first respondent/ owner of the vehicle.

8.This Court heard the submissions made on either side and perused the materials available on record.

9.The learned counsel for the appellants/claimants would submit that the Tribunal ought to have directed the second respondent/ Insurance Company to pay the compensation amount to the claimants with liberty to recover the same from the first respondent/owner of the vehicle, since the policy in question covered the accident and in respect of third parties risks the insurer has to indemnify the liability.



10. The learned counsel appearing for the second respondent/ Insurance Company submitted that as per the evidence of P.W.2 in his cross examination 8 persons including Kattapomman have travelled in the goods carrier at the time of accident only as gratuitous and unauthorised passenger without goods being consigned. They were waiting in the bus stop for the bus and since the bus has not arrived there, they have travelled in the goods carrier as unauthorised passengers. Even as per the cross examination of P.W.2, the deceased and other 7 persons have not carried any goods along with them at the time of accident. The insured vehicle was a Milk van and there could be no carriage of passengers in such a goods carriage. Hence, the award passed of the Tribunal may kindly be confirmed.

11. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and considering the evidence of P.W.2 and Ex.P.1, found that due to the rash and negligent driving of the offending vehicle, which was insured with the 2nd respondent/ Insurance Company, the accident had occurred and further, found that the eight persons without goods had travelled in the milk van and as per FIR, the deceased travelled as a passenger therefore, rightly directed the first respondent to pay the compensation to the claimants and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 29.09.2010, passed in MCOP.No.328 of 2010, on the file of the Motor Accidents Claims Tribunal Cum Additional District Judge (Fast Track), Dindigul is hereby confirmed. The first respondent is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants 1,3 and 4 are permitted to withdraw their respective share as apportioned by the Tribunal, with accrued interests and costs, without filing any formal petition before the Tribunal. The Tribunal is directed to deposit the shares of the minor children in any one of the Nationalized Banks until they attain majority. The first appellant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor children. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Dindigul.

+1cc to Mr.A.Saravanan, Advocate Sr.No.78941

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.79220

DSK

VB/MR/KKR/SAR1/17/11/2017/4P/4C

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