IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.09.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2007 of 2007

1. Bakiam
2. Minor.Tamizharasi
3. Minor.Kumar
4. Minor.Ambika

(Appellants 2 to 4 are minors rep. by their next friend and mother the 1st appellant) ... Appellant

Versus

1. S.Palani
2. The Divisional Manager, Oriental Insurance Co. Ltd., Tiruvannamalai.
3. Chinnapayyan ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.04.2007 made in M.C.O.P.No.1003 of 2002 on the file of the Motor Accident Claims Tribunal (District Judge), Tiruvannamalai.

For Appellants : No appearance

For 1st Respondent : Mr.B.Jawahar

For 2nd Respondent : Mr.M.Rajasekhar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 25.04.2007 made in M.C.O.P.No.1003 of 2002 on the file of the Motor Accident Claims Tribunal (District Judge), Tiruvannamalai.

2. The brief facts of the case are as follows :

On 05.11.2001, the deceased along with four persons, have taken the vehicle on rent and the husband of the first appellant Elumalai loaded five bags of fertilizers and five bags of cattle feeds in the said vehicle and when they were proceeding, the driver of the said vehicle drove the vehicle in a rash and negligent manner and caused the accident. Due to the accident, the deceased sustained severe injuries. He was admitted in the hospital and he died inspite of treatment given to him. The claimants have claimed a sum of Rs.5,50,000/- as compensation.

3. The second respondent/Insurance Company, in the counter statement, has stated that the deceased was travelling as a coolie in the said vehicle by loading five bags of fertilizers and five bags of cattle feeds and the goods belong to the first respondent and the vehicle is insured with the second respondent. The Insurance Company is not liable to pay the compensation. On the other hand the second respondent has denied the negligence on the part of the driver. Apart from that the said vehicle was allotted for utilizing the purpose of agricultural work and as per the FIR, the

said vehicle was given for rent and thus the owner violated the policy condition. Therefore, the Insurance Company is not liable to pay the compensation.

4. The Tribunal, after analyzing the evidence and documents placed before it, has determined that the deceased was not carrying any fertilizers and cattle feeds in the said vehicle on the date of occurrence, which was very much proved by the evidence and documents placed before the Tribunal. The Tribunal has given finding that the deceased has not met with the accident, while he was carrying the fertilizers and cattle feeds and the mode of accident was also not proved before the Tribunal. Hence, the Tribunal dismissed the claim application. Aggrieved against the said award, the claimants have preferred this appeal.

5. In the grounds of appeal, the appellants have stated that the dismissal of the claim application by the Tribunal is against the provision of law. The Tribunal ought to have allowed the claim application and given a finding that the accident occurred due to the rash and negligent manner of the driver of the said vehicle. The Tribunal would have attributed the liability on the owner of the vehicle or on the Insurance Company, but dismissal of the claim application is not proper and justified. On the whole, the beneficial intent of the Motor Vehicles Act was not properly appreciated by the Tribunal and the claim of the claimants have to be properly ordered by the Tribunal.

6. No representation for the appellant. Heard the learned counsel for the 1st and 2nd respondent and perused the materials available on record.

7. Though, the appellants have not appeared for advancing any arguments, on a perusal of the records, it is seen that the witnesses were examined before the Tribunal on the side of the claimants and also reveals the fact that on the date of the accident, the deceased Elumalai was not carrying any fertilizers and cattle feed in the said vehicle and this fact was also not spoken by the witnesses on the side of the claimants. Apart from that the said vehicle, which involved in the accident has to be utilized only for the agricultural purpose, but contrary to the terms and conditions of the policy, the said vehicle has been utilized for carrying the goods by the deceased and other four persons. Hence, it is observed that they were travelling in the alleged vehicle as unauthorized passengers and the second respondent/Insurance Company is not liable to pay the compensation.

8. In view of the above, it is clear that the alleged accident has not proved before the Tribunal by the claimants and the witnesses, who were examined on the side of the claimants. Further, the FIR also reveals the fact that on the said date, there was no such goods were carried in the vehicle were carried as spoken by the claimants. It is also the evidence of P.W.2, that the said vehicle was not let in for rent. Hence, in view of the contradictory evidence of the owner of the vehicle, who deposed that the vehicle was not given for rent, for the purpose, it was utilized and also considering the failure

in producing the documents in support of his claim, the finding of the Tribunal is quite proper. This Court is unable to see any reason to interfere with the findings of the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

25.09.2018

Index : Yes/No
Internet : Yes/No
Speaking/Non speaking Judgment
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To

1.The Motor Accident Claims Tribunal (District Judge),
Tiruvannamalai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

S. RAMATHILAGAM, J.

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