IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.355 of 2006
and
CMP No.1119 of 2006

The Oriental Insurance Company Limited,
D.M.Office, S.V. Complex, II Floor,
139, Easwarankoil Street,
Pondicherry. ... Appellant/2nd Respondent

Versus

1. Ellammal
2. Minor Sivakumar
3. Minor Janagi
4. Minor Balu
5. Minor Bakyaraj

(Minor petitioners 2 to 5 are represented by their mother/ guardian, the 1st petitioner)

6. Ayyakkanu
7. Anjalai
8. Raghavendran ... Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.05.2005 made in M.C.O.P.No.184 of 2000 on the file of the (Chief Judicial Magistrate) Motor Accident Claims Tribunal, Villupuram District, Villupuram..

For Appellant	:	M.Rajasekhar
For Respondents 1 to 6	:	Mr.S.Saravanakumar
For 7th Respondent	:	Died
For 8th Respondent	:	Mr.C.Prakasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 27.05.2005 made in M.C.O.P.No.184 of 2000 on the file of the (Chief Judicial Magistrate) Motor Accident Claims Tribunal, Villupuram District, Villupuram.

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

On 08.08.1995 at about 3.00 a.m., when the deceased was travelling in the Lorry bearing Registration No.CAM 3876 as load man, the driver of the said lorry had driven the same in a rash and negligent manner and the lorry got capsized. As a result, the deceased sustained grievous injuries and he died on the spot. For the said death, the claimants/respondents 1 to 7 herein, have claimed a sum of Rs.3,00,000/- as compensation.

3. The Insurance Company/2nd respondent has denied the rash and negligent driving on the part of the 1st respondent vehicle and also the sum claimed by the claimants is also excessive along with the interest.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the said accident was occurred due to rash and negligent driving on the part of the driver/1st respondent and fixed the liability on the 1st and 2nd respondents to pay the compensation and awarded a sum of Rs.2,71,800/- under the following heads:

Heads	Amount awarded by the Tribunal
For Contribution to Family	2,44,800.00
For Consortium	5,000.00
For Love and Affection for the petitioners 2 to 5	20,000.00
For Funeral Expenses	2,000.00
TOTAL	2,71,800.00

Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, it has been stated that fixing of liability on the part of this appellant is an error when PW1 was not at all the eye witness to the accident. The further grievance raised in the appeal is that the income of the deceased is fixed at Rs.1800/- per month. The other averment made in the appeal is that the respondents 6 and 7 are not at all the dependants of the deceased. The further grounds raised in the appeal is that when there were 9 persons travelled in the lorry which is a goods vehicle, the liability by rejecting RW1 evidence is not proper. When there is a violation of policy and the goods vehicle has been used for carrying the passengers,

the liability fixed on the respondent/appellant is not justified. So among the other grounds, the grievance raised by the appellant is that the Tribunal has fixed the liability only on the Insurance Company by ignoring the evidence of RW1.

6. On perusal of judgement by the Tribunal , it is observed that the deceased along with other persons totally 9 persons were travelled in the said goods vehicle. RW1 who is the Senior Assistant in the Legal Section of the appellant/Insurance Company was examined before the Tribunal. He has filed the policy copy Ex.R1 and investigation report Ex.R2. It is observed that 9 persons were travelled in the said vehicle and there is a violation of policy condition when the goods vehicle has been used for taking the passengers after attending a death. On the side of the appellant/2nd respondent, it has been stated before the Tribunal that the Insurance Company cannot be made liable when there is a violation of policy condition. When the discussion made by the Tribunal that the policy was in force on the date of accident and in view of the registration, the injured person or the deceased are unaware of the terms and conditions of the insurance policy and they cannot be penalised for the loss sustained by them. Hence, the arguments advanced by the appellant/Insurance Company is that by quoting the loss, the Tribunal has fixed the liability.

7. It is argued on the side of the appellant that in 2018 (2) TN MAC 273 (SC) (Shivaraj v. Rajendra & anr.), wherein the claimant was travelled in a Tractor as a passenger in breach of policy condition and hence the Tribunal has held that the claimant who is a gratuitous passenger is not liable for any compensation from the Insurance Company. However, in the said case, a finding was given that the Insurance Company has to pay compensation amount with liberty to recover the same from the owner of the vehicle. While considering the findings made in the case wherein number of cases were reported with a view that the Insurance Company has to pay relief to the aggrieved persons and it is at liberty to recover the same from the owner of the vehicle. Hence, in view of the fact that the dependants who are unaware of the terms and conditions have to be appropriately considered and the findings given by the Tribunal based on the aforesaid reasons is quite reasonable and does not require any interference by this Court. Further, on the side of the appellant, it is argued that even in the absence of appeal for enhancement of compensation by taking into consideration the age and income of the deceased and the number of claimants, a sum has to be enhanced and on perusal of records, it is observed that it is a claim of Rs.3,00,000/- and the Tribunal has assessed the income by taking the age and occupation of the deceased as load man and has properly calculated the loss under various heads and hence the quantum arrived by the Tribunal is also proper and hence, the award by the Tribunal and the finding of the Tribunal does not require any interference.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. The Appellant Insurance Company is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 7/claimants are directed to withdraw the amount on making appropriate application as apportioned by the Tribunal. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Villupuram District, Villupuram.

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

+1cc to Mr.C.Prakasam, Advocate SR.No.70862

+1cc to Mr.M.Rajasekar, Advocate SR.No.70639

C.M.A. No.355 of 2006
and
C.M.P.No.1119 of 2006

JP(CO)
GMY(11/12/2018)