

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2662 of 2008

and

M.P.No.1462 of 2008

M/s.National Insurance Co. Ltd.,
Villupuram Branch Office,
Muruga Complex - I Floor,
No.12, K.K.Road,
Villupuram - 605 602.

...Appellant/Respondent 2

Vs

1.Sakunthala

2.Veerappa Gounder

... RR1 & 2/Petitioners

3.S.Chakkaravarthy

(R-3 Set Exparte in the Lower Court)

... R3/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.12.2002 made in M.C.O.P.No.58 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate) at Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : R1- Died, T/E

R2 -served- No Appearance

R3-Exparte

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JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 09.12.2002 passed by the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate) at Villupuram in M.C.O.P.No.58 of 2001.

2.The brief facts leading to the filing of the instant

appeal are as follows:

(i) One V.Raja died on 02.07.2000, as a result of an accident caused by a tractor bearing Registration No.TN-32-A-0554 owned by the third respondent insured with the Appellant. The dependants of the deceased are the respondent Nos.1 & 2 in this appeal. They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.58 of 2001 seeking a compensation of Rs.10,00,000/-.

(ii) The Motor Accident claims Tribunal by its Award dated 09.12.2002 in M.C.O.P.No.58 of 2001 directed the Appellant to pay the respondent Nos.1 & 2, a sum of Rs.2,56,800/- together with interest at the rate of 9%, per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the Award dated 09.12.2002 passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.58 of 2001, the instant appeal has been filed by the Transport Corporation.

3.Heard, Mr.D.Bhaskaran learned Counsel for the Appellant. Till date notice has not been served on the first respondent. Since the appeal relates the year 2008, and this Court is going to confirm the Award, there is no necessity to serve the notice on the first respondent.

4.According to the learned Counsel for the Appellant, the deceased was a gratuitous passenger in the tractor and therefore the Appellant is not liable to pay any compensation to the respondent Nos.1 and 2 who are the dependants of the deceased.

5.According to him, the Tribunal has not given any finding on this issue, even though the same was raised by the Appellant in the counter statement filed before the Tribunal.

6.This Court has examined the impugned Award. As seen from the impugned Award it has been the consistent stand of the claimants who are the respondent Nos.1 and 2 in this appeal that the deceased who was travelling in the tractor at the time of the accident was carrying sugar cane from the village to a sugar factory. Even though the Appellant contended in its counter statement that the deceased was an unauthorized gratuitous passenger, no evidence has been produced by the Appellant before the Tribunal to establish that the deceased was a gratuitous passenger. It is for the Appellant to produce sufficient evidence to prove that the deceased was a gratuitous passenger which they miserably failed to prove before the Tribunal.

7.Considering all these factors, the Tribunal has rightly awarded compensation to the respondent Nos.1 and 2, which is payable by the Appellant.

8.In the considered view of this Court, there is no infirmity in the Award passed by the Tribunal. In the result, there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition No.1462 of 2008 is closed. No Costs.

9.It is represented that the entire Award amount has already been deposited to the credit of M.CO.P.No.58 of 2001 before the Tribunal. The respondents No.1 and 2 are permitted to withdraw the same on filing an appropriate application as per the ratio apportioned by the Tribunal.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

arb/msr

To

1.The Motor Accident Claims Tribunal,
(Additional District Judge-cum-Chief Judicial Magistrate)
Villupuram.

2.The Section Officer,Vernacular Section,
Madras High Court.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.65766

सत्यमेव जयते

C.M.A.No.2662 of 2008

EV (CO)

GMV (08/11/2018)

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