IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.60 of 2006
and
C.M.P.Nos.220 & 221 of 2006

The Branch Officer,
New India Assurance Company Limited,
Gobichettipalayam,
Periyar District. ... Appellant/R3

Versus

1.R.Nagajothi

2.Minor R.Satheshkumar
3.Minor R.Gowathamkumar
Minors 2 and 3 are represented by mother and natural guardian of the 1st respondent R.Nagajothi

4.Kembaiya Gounder
5.Thippammal ...RR1 to 5/Petitioners
6.P.Jayaraj ...Respondent 6/Respondent 1
7.R.Nithiyanandam ... Respondent 7/Respondent 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.09.2004 made in M.C.O.P.No.1169 of 2001 on the file of the Motor Accidents Claims Tribunal and First Additional District Judge, Coimbatore.

For Appellant : Mr.P.G.Padmanabhan

For R1 to R5 : Mr.Jenald Esrome for Mr.J.Pothiraj

RR6 & 7 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 29.09.2004 made in M.C.O.P.No.1169 of

2001 on the file of the Motor Accidents Claims Tribunal and First Additional District Judge, Coimbatore.

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

On 27.05.2001 at about 15.30 hours, the deceased Rangasamy along with his family members and relatives were travelling in a Tata Van bearing Registration No.TN.41 B 5393 from Suthanthirapuram to Mettupalayam Badrakaliamman Koil. Due to the rash and negligent driving of the van driver, the deceased Rangasamy was thrown from the van, sustained head injury and also multiple injuries all over the body, immediately he was taken to the Mettupalayam Government Hospital where he died. The claimants being the legal heirs of the deceased Rangasamy have claimed a sum of Rs.5,00,000/- as compensation.

3. The Insurance Company, in the counter statement, has stated that the vehicle which involved in the accident is a goods carriage vehicle and the policy of the said vehicle has been issued subject to various terms conditions. It is also stated under the said policy, the vehicle shall carry only goods and not passengers. Since the said vehicle was carrying the passengers at the time of the accident, it violates the terms and conditions of policy. The other averment made in the counter statement is that the denial of rash and negligent driving on the part of the driver of the said vehicle and stated that the deceased himself had fallen from the vehicle. Further, the averment made in the counter statement is that the deceased substantially contributed to the accident and hence the persons travelled in the said vehicle are unauthorized passengers, which is against the conditions of policy. Hence, there is no locus-standi for seeking any compensation. The compensation claimed by the claimants is also highly excessive.

4. The Tribunal, upon analysing the evidence and documents placed on both sides, has given a finding that the accident occurred only due to rash and negligent driving on the part of the driver of the first respondent vehicle and awarded a sum of Rs.3,50,000/- as compensation. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, it has been stated that Ex.A3, the Motor Vehicle Inspectors report reveals the fact that the insured van was a open van and hence it can be very well presumed that the said van cannot be used for carrying passengers. The policy does not cover for carrying passengers. The deceased was a passenger in the goods vehicle and the Insurance Company is not liable to pay the compensation. The other aspects regarding the monthly income taken by the Tribunal at Rs.3,000/- and application of the multiplier and the compensation arrived at Rs.3,12,000/- is highly excessive.

6. Heard both sides and perused the materials available on record.

7. The learned counsel for the appellant argued that with regard to the fact that the vehicle involved in the accident is a goods carriage vehicle, which was very much proved before the Tribunal. The Motor Vehicle Inspectors report also reveals the fact that the said vehicle is a goods vehicle and there is no top for the vehicle and hence the persons are not allowed to travel as passengers in the said vehicle. The main argument advanced by the appellant is that the deceased himself contributed to the accident, hence, the Insurance Company is not liable to pay the compensation.

8. On a perusal of the records, it is seen that the Tribunal has given a finding that the vehicle involved in the accident is only a goods vehicle and the deceased was travelled as passenger. However, it is also observed that the accident had occurred only due to the rash and negligent driving on the part of the driver of the vehicle. To that effect P.W.2- eye-witness was examined before the Tribunal. It is argued by the appellant that the Tribunal has not considered the fact that since the said vehicle is a goods vehicle, the Tribunal ought not to have been fixed liability on the Insurance Company.

9. It is clearly proved before the tribunal by way of documents and evidence that the accident had occurred only due to the rash and negligence on the part of the driver of the vehicle and the tribunal has also observed the same in its finding. It is also seen that the compensation awarded by the tribunal in various heads are found reasonable and proper, hence this Court without interfering the sum determined by the tribunal, inclined to modify the liability fixed by the tribunal. Accordingly, the driver and owner of the vehicle are directed to pay 50% of the total compensation awarded by tribunal jointly and severally and the remaining 50% of the award amount is directed to be paid by the Insurance Company.

10. It is seen from the records that this Court by an order dated 20.01.2006 has granted an interim stay, directing the appellant/insurance company to deposit the entire award amount with accrued interest.

11. In view of the above, the following order is made;

i. The Civil Miscellaneous Appeal is party allowed. No costs. Consequently connected Miscellaneous Petitions are closed.

ii. The Appellant/ Insurance Company is permitted to withdraw the 50% of the award amount from the deposit already made by them.

iii. The respondents 6 & 7, who are the driver and owner of vehicle are directed to pay the remaining 50% of the compensation with interest and cost jointly and severally within period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimants bank account through RTGS within one week thereon. The claimants/respondents 1 to 5 herein are permitted to withdraw their shares as per the apportionment ordered by the tribunal.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The First Additional District Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras-600 104.

+1cc to Mr.P.G.Padmanabhan, Advocate Sr.74433
+1cc to Mr.J.Pothiraj, Advocate Sr.75190

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srg 05/02/2020