

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.852 of 2010

and

M.P.No.1 of 2010

The National Insurance Company Limited,
Vellore.Appellant/2nd Respondent

...vs..

1.Tmt. Senthamarai

2.Tmt. Devi

3.Thiru. Mathan

....Respondents 1 to 3/ Claimants

4.Thiru. S.Annamalai

....4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 16.11.2009 in M.C.O.P.No.245 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar, Thiruvannamalai District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.E.Kannadasan for R2 and R3

: No Appearance for R4

JUDGMENT

The appellant is the National Insurance Company Limited, Vellore. The respondents 1 to 3 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, in M.C.O.P.No.245 of 2005 before the subordinate Judge, Cheyyar at Thiruvannamalai District seeking a compensation of Rs.6,00,000/- for the death of one Palani, who died in a road accident that took place on 28.05.2005.

2.The case of the respondents 1 to 3/claimants is as follows:

On 28.05.2005, the deceased Palani was travelling as a cleaner in a Minidor van bearing Registration No. TN 21 F 8112 and since the driver of the Minidor van drove the vehicle rashly and negligently, the Minidor van toppled and the deceased Palani died on spot.

3.According to the respondents 1 to 3/claimants, the rash and negligent driving of the driver of the Minidor van bearing Registration No. TN 21 F 8112 was the cause of the accident and that since the said van was insured with the present appellant, both of them are jointly and severally liable to pay compensation to them. The owner of the Minidor van remained absent before the tribunal and therefore was set ex-parte. The present appellant filed a counter and contested the claim petition. The specific case of the present appellant before the tribunal is that the deceased was neither a labourer nor a cleaner in the Minidor van and therefore, they are not liable to pay any compensation to the claimants.

4.The learned subordinate Judge, Cheyyar, Thiruvannamalai District after analysing the evidence on record, held that the deceased Palani was travelling in the Minidor van only as a cleaner and therefore, the owner of the Minidor van as well as its insurer namely the National Insurance Company Limited, Vellore, are jointly and severally liable to pay compensation to the respondents 1 to 3/ claimants. Aggrieved over the said orders passed by the Subordinate Judge, Cheyyar at Thiruvannamalai, the National Insurance Company has filed the present appeal.

5.Mr.J.Chandran, learned counsel appearing for the appellant contended that apart from the deceased Palani, several persons were travelling in the Minidor van and that infact, the Minidor van was also attached with a trailor. His specific contention is that since in the claim petition, the profession of the deceased Palani was mentioned as an agriculturist and a weaver, the tribunal was wrong in holding that the deceased travelled as a cleaner in the Minidor van. He also relied on the decision in N.V. Govindan Nambiar vs. Janaki and others reported in 2003 ACJ 721 and contended that the court has to contest the case as pleaded by the parties and cannot make out a new case for any side.

6. In Page no. 2 of the claim petition, the profession of the deceased Palani is mentioned as "agriculturist and a weaver". However, in Page no. 6 of the claim petition, it is clearly indicated that the deceased was travelling in the Minidor van as a cleaner. It is also seen from the records that the owner of the vehicle had lodged a complaint with the police, with regard to the accident, which culminated into registering of FIR (Ex.P1). In the FIR, it is clearly indicated that the deceased Palani was travelling in the Minidor van as a cleaner and that he was sitting in the front seat of the Minidor van. The third respondent/third claimant namely the brother of the deceased Palani examined himself as P.W.1 and has clearly deposed that his brother Palani was travelling in the Minidor van as a cleaner.

7. Based on the evidence adduced on the side of the claimants, the tribunal has come to the conclusion that the deceased Palani was travelling in the Minidor van only as a cleaner and all the observations made by the tribunal in this regard are perfectly in order. Merely because in Page no. 2 of the claim petition, the profession of the deceased was mentioned as an agriculturist and a weaver, the entire claim petition cannot be thrown out. I therefore, find no merits in the arguments advanced by the learned counsel appearing for the appellant.

8. As far as the quantum of the award passed by the tribunal is concerned, no appeal or cross objection is filed by the claimants and the learned counsel appearing for the respondents 1 to 3 contended that the respondents 1 to 3/claimants are satisfied with the award passed by the tribunal. The learned counsel appearing for the appellant also did not adduce any argument questioning the quantum of compensation awarded by the tribunal.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

(ii) The appellant National Insurance Company Limited, Vellore, is directed to deposit the compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.245 of 2005 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 3/claimants are at liberty to withdraw the same after following

necessary procedures. The compensation amount should be apportioned as per the orders passed by the tribunal in M.C.O.P.No.245 of 2005.

mbi

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

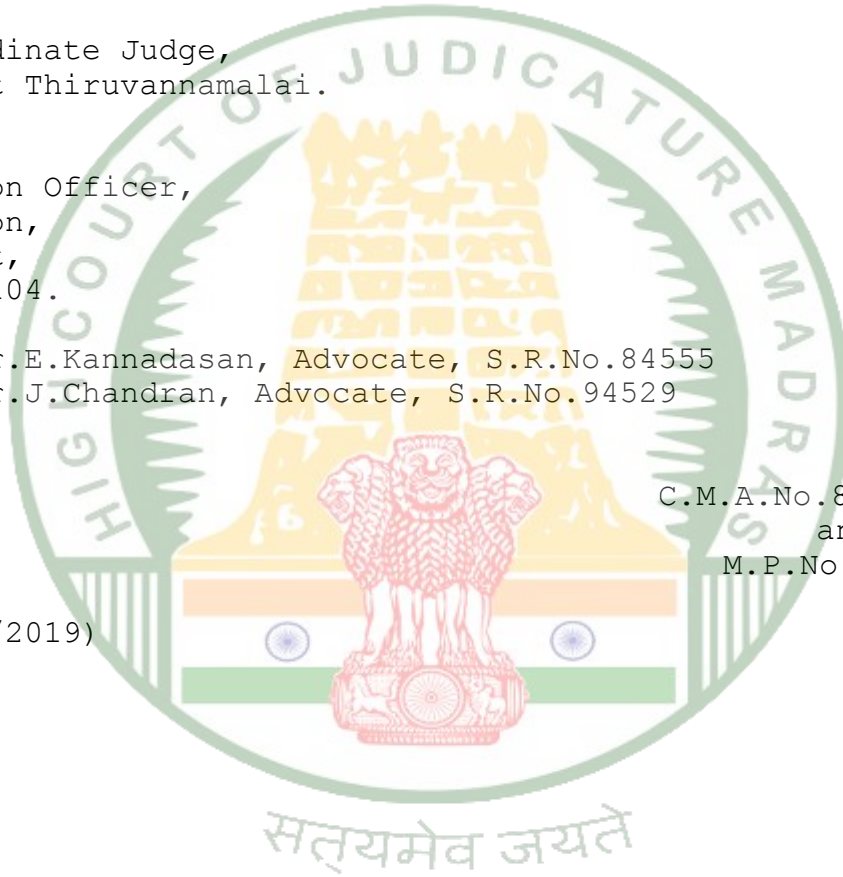
To
The Subordinate Judge,
Cheyyar at Thiruvannamalai.

Copy to:-
The Section Officer,
V.R.Section,
High Court,
Madras - 104.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.84555
+1cc to Mr.J.Chandran, Advocate, S.R.No.94529

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