

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.1660 of 2015

The Manager

IFFCO-TOKIO

General Insurance Company Ltd.,

3rd party Claims office,

No.28, 1st & 2nd Floor,

North Usman Road,

T.Nagar, Chennai 17.

.. Appellant

Vs.

1.K.Munusamy

2.M.Lakshmi

3.M.Pichandi

4.M.Sekar

5.M.Anjali

6.M.Bhuvanawari

7.Minor M.Kumaresan

8.Minor M.Rajisundari

9.E.Karunakaran

... Respondents

(Minors 7 & 8 rep. By their natural guardian/next friend,
father K.Munusamy)

(R9 set exparte before the Trial Court and hence given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 07.02.2012, made in MCOP.No.666 of 2010, on the file of the II Judge, District Court, (Motor Accidents Claims Tribunal), Kancheepuram.

For Appellant : Ms.K.Saraswathi
For R1 to R8 : Mr.C.Prabakaran
For R9 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 07.02.2012, made in MCOP.No.666 of 2010, on the file of the II Judge, District Court, (Motor Accidents Claims Tribunal), Kancheepuram.

2.The appellant is the 2nd respondent-Insurance Company in M.C.O.P.No.666 of 2010 on the file of the II Judge, District Court, (Motor Accidents Claims Tribunal), Kancheepuram. The respondents 1 to 8 are the claimants who filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one M.Manormani in an accident that took place on 15.06.2007.

3.According to the respondents 1 to 8, the deceased and others purchased vegetables in Tambaram market and was proceeding towards their native village. While so, near Orakkadam Kootroad on the Kanchipuram - Tambaram High Road, due to rash and negligent driving by the driver of the vehicle belonging to the 9th respondent, the driver lost control and the van capsized near a pit. Due to the accident, the deceased sustained injuries and died on the next day, inspite of the treatment given to him. The van was insured with the appellant. Since 9th respondent is the owner of the van, both the 9th respondent and the appellant are liable to pay the compensation.

4.The appellant filed counter statement and denied all the averments and contended that the deceased and others traveled as passengers in a goods van. The accident occurred as more number of persons traveled as passengers in the goods vehicle. The insurance policy does not cover passengers traveling in the goods vehicle. 9th respondent alone is liable to pay the compensation, in view of violation of permit and policy condition and hence, the appellant is not liable to pay any compensation.

5.Before the Tribunal, on the side of the respondents 1 to 8, the 1st respondent examined himself as P.W.1 and one Kanaga was examined as P.W.2 and 5 documents were marked as Exs.A1 to A5. No oral and documentary evidence was let in on the side of the appellant and the 9th respondent.

6.Considering the pleadings, oral and documentary evidence, the Tribunal held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the 9th respondent and directed the appellant to pay the compensation on behalf of the 9th respondent. Considering the age, nature of avocation of the deceased, the Tribunal awarded totally a sum of Rs.4,51,000/- as compensation to the respondents 1 to 8.

7.Against the said award and decree dated 07.02.2012 made in M.C.O.P.No.666 of 2010, the Insurance Company has come out with the present appeal.

8.The learned counsel for the appellant contended that the Tribunal failed to consider the contention of the appellant that the deceased and others traveled in the goods vehicle as

passengers. The said fact was admitted in her cross-examination by P.W.2, who also traveled in the van at the time of accident. The Tribunal has not even considered the contention of the appellant and has not given any finding with regard to unauthorized passengers.

9.Per contra, the learned counsel for the respondents 1 to 8 contended that the deceased traveled in the van as owner of the goods, as she purchased the vegetables from Tambaram market and traveled along with goods to her native place. The Tribunal has rightly directed the appellant to pay the compensation and prayed for dismissal of the appeal.

10.Heard the learned counsel for the appellant as well as the respondents 1 to 8 and perused the materials available on record.

11.From the materials on record, it is seen that the claimants 1 to 8 have stated that the deceased traveled along with vegetables purchased at Tambaram market. P.W.1 in his cross-examination has also stated so. Similarly, P.W.2 in her chief-examination has stated to that effect. On the other hand, the appellants in the counter statement has stated that the deceased and others traveled only as passengers in the goods vehicle. The learned counsel for the appellant referred to admission of P.W.2 in cross-examination that they are returning from a village near Malaipattu after attending funeral. A suggestion also was put to P.W.1 that in the First Information Report, it has been stated that the deceased and others were returning after attending a funeral. The Tribunal has not considered the pleadings and evidence of P.W.1 and P.W.2 and has not given any finding as to whether the deceased traveled as owner of the goods or traveled as gratuitous passengers in the goods vehicle. In view of the same, the award of the Tribunal dated 07.02.2012 made in M.C.O.P.No.666 of 2010 is set aside and the same is remanded back to the Tribunal to consider the contentions of the respondents 1 to 8 and appellant and to give a specific findings as to whether the deceased traveled in the goods vehicle along with the goods as owner of the goods or traveled as a gratuitous passengers.

With the above direction, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
(Motor Accidents Claims Tribunal),
District Court,
Kancheepuram.

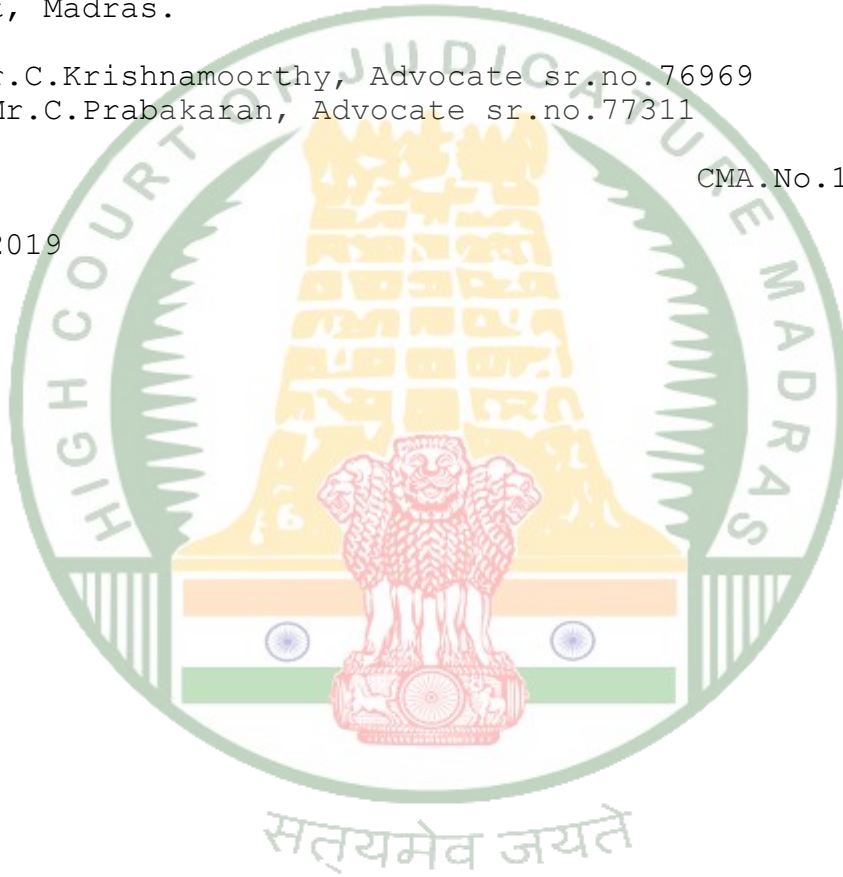
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Krishnamoorthy, Advocate sr.no.76969

+1cc to Mr.C.Prabakaran, Advocate sr.no.77311

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