

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.619 of 2015

The New India Assurance Co. Ltd.,
Represented by its Senior Divisional Manager,
Divisional Office 711800, Commercial Complex,
C.S.I. Building, II Floor,
No.1, Officer Line, Vellore-632 001.

... Appellant/2nd Respondent

Vs.

1.Hayath Basha Saheb

2.Yasmeen

3.Minor Nafeeza

4.Minor Shabeena ... Respondent 1 to 4/Petitioner

(Minors rep. by their mother &
natural guardian Yasmeen)

5.T.Imranudeen ... 5th Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree made in M.A.C.T.O.P.No.294 of 2012 on the file of the II Additional District and Sessions Judge, (Motor Accidents Claims Tribunal), Vellore at Ranipet dated 28.10.2014.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R4 : Mr.B.Jawahar

For R5 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the liability fastened on them, by the award dated 28.10.2014 made in M.A.C.T.O.P.No.294 of 2012 on the file of the II Additional District and Sessions Judge, (Motor Accidents Claims Tribunal), Vellore at Ranipet.

2.The appellant is the 2nd respondent, respondents 1 to 4 are the claimants/petitioners and 5th respondent is the 1st

respondent in M.C.O.P.No.294 of 2012, on the file of the II Additional District and Sessions Judge, (Motor Accidents Claims Tribunal), Vellore at Ranipet, claiming a sum of Rs.20,00,000/- as compensation for the death of one Seetu, son of the 1st respondent, husband of the 2nd respondent and father of the respondents 3 and 4, who died in the accident that took place on 20.12.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the vehicle belonging to the 5th respondent and directed the 5th respondent, owner of the vehicle as well as the appellant, insurer of the vehicle, to pay a sum of Rs.7,73,000/- as compensation to the respondents 1 to 4.

4.Challenging the award dated 28.10.2014 made in M.A.C.T.O.P.No.294 of 2012, fastening liability on them, the appellant has come out with this appeal.

5.According to the learned counsel appearing for the appellant-Insurance Company, the insurance policy did not cover a load man and the deceased traveled in a goods carriage, alleged to be a load man. The Tribunal has not properly appreciated the evidence of RW.1, the Administrative Officer of the appellant and Ex.R1, the Investigation Report and erroneously held that the deceased was a third party. In the present case, only the owner of the vehicle is liable to pay compensation and in support of his contentions, relied on the following judgments reported in:

(i)2012 (1) TN MAC 89 (DB) [Royal Sundaram Alliance General Insurance Co. Ltd., and another Vs. P.Ayyakannu and another]:

"10....We are bound by this judgment and therefore, we hold that the Insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the Insurer was bound to cover."

(ii)2008 (2) TN MAC 29 (SC) [National Insurance Co. Ltd., Vs. Cholleti Bharatamma and others]:

"17.It is now well-settled that the owner of the goods means only the person who travels in the cabin of the vehicle.

18.In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondent themselves was that the deceased had boarded the lorry and paid an amount of Rs.20/- as Transport Charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner

as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicle Act."

6.The learned counsel appearing for the respondents 1 to 4 contended that the deceased travelled in the commercial vehicle along with chicken birds. This averment was not denied by the appellant, but no evidence was let in by the appellant to the effect that there was no goods in the vehicle at the time of accident.

7.Heard the learned counsel for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

8.As per Section 147 of the Motor Vehicles Act, 1988, the owner of the vehicle can travel along with his goods and insurance policy covers the owner of the goods or his authorized representative. As per Rule 236 of the Tamil Nadu Motor Vehicles Rules, 1989, six persons can travel in goods vehicle. The Division Bench of this Court considering this issue, held that the owner of the goods can travel in back side of the goods vehicle, along with the goods. In view of Section 147 of the Motor Vehicles Act, Rule 236 of the Tamil Nadu Motor Vehicles Act and the judgment of this Court referred to above, the contention of the learned counsel for the appellant is without merits. The judgments relied on by the learned counsel for the appellant are not applicable to the facts of this case.

9.For the above reason, the appeal is dismissed and the sum of Rs.7,73,000/-, granted by the Tribunal as compensation is confirmed. The Appellant-Insurance Company as well as the 5th respondent are directed to deposit the award amount along with interest and costs, jointly and severally, less the amount deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 2 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The share of the minor respondents 3 & 4 are directed to be deposited in any of the Nationalized Bank, till they attain majority. The 2nd respondent/mother of the minor respondents 3 & 4 is permitted to withdraw the interest, once in three months for the welfare of the minor respondents 3 & 4. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

1. The II Additional District and Sessions Judge,
(Motor Accidents Claims Tribunal),
Vellore at Ranipet

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

+1cc to Mr.B.Jawahar, Advocate SR.No.83558

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.83693

CMA.No.619 of 2015

CNR(CO)
GMY(04/06/2019)



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