

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2560 of 2018

1.Nilavazhagi

2.Minor Dinesh Kumar

3.Minor Iswarya

4.Minor Senthil Kumar

5.Rajalakshmi ... Appellants / Petitioners

(Minors 2 to 4 are rep. By their mother/
next friend Nilavazhagi)

Vs.

1.Yusuf

2.The New India Insurance Co. Ltd., Kerala,
First Floor, Tarip, Town Hall (Opp),
Thirur 676101,
Kerala State. ... Respondents / Respondents

(R1 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.06.2016 made in M.C.O.P.No.385 of 2009, on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur.

For Appellants : Mr.P.Parthikannan
for Mr.S.Kaithamalai Kumaran

For R2 : Mr.S.Manivannan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging only the liability of the award dated 17.06.2016 made in M.C.O.P.No.385 of 2009, on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur.

2.By consent of both the parties, the appeal itself is taken up for final disposal at the admission stage.

3.The appellants are the claimants/petitioners who filed M.C.O.P.No.385 of 2009, on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ravi, husband of the 1st appellant, father of the appellants 2 to 4 and son of the 5th appellant, who died in the accident that took place on 20.11.2007.

4.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 lorry belonging to the 1st respondent and directed the 1st respondent, owner of the vehicle to pay a sum of Rs.15,47,000/- as compensation to the appellants.

5.Challenging the portion of the award dated 17.06.2016 made in M.C.O.P.No.385 of 2009, fastening liability only on the 1st respondent, exonerating the 2nd respondent from its liability, the appellants have come out with this appeal.

6.The learned counsel for the appellants contended that P.W.2 has stated that the deceased was traveling in a cabin. P.Ws.1 and 2 have deposed that the deceased was a coolie working under the 1st respondent, owner of the vehicle. No contra evidence was let in to dispute the said contention. The accident occurred only due to the rash and negligent driving by the driver of the 1st respondent and FIR was lodged against the driver of the lorry. In the accident, only Ravi died and others got injured. The Tribunal erred in holding that the deceased traveled as a gratuitous passenger and directed only the 1st respondent to pay the compensation. In any event, the Tribunal ought to have ordered pay and recovery directing the 2nd respondent-Insurance Company to pay at the first instance and recover from the owner of the vehicle.

7.Per contra, the learned counsel for the 2nd respondent contended that the deceased and others, totally 15 persons traveled in a goods vehicle as gratuitous passengers. The policy issued by the 2nd respondent did not cover the claim of compensation for gratuitous passengers. The Hon'ble Apex Court and this Court have held that the Insurance Company is not liable to pay compensation to un-authorized passengers and prayed for dismissal of the appeal.

8.Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

9. From the materials on record, it is seen that P.W.2 has deposed that the deceased traveled in the cabin. P.Ws.1 and 2 have stated that the deceased was a coolie working under the 1st respondent, owner of the vehicle. There is no contra evidence to the effect that the deceased was not a coolie under the 1st respondent and that he did not travel in the cabin. From the award of the Tribunal, it is seen that the Tribunal has taken note of the fact that the deceased traveled in the cabin. The Tribunal erroneously held that the deceased was a gratuitous passenger, even though he traveled in the cabin. The Tribunal failed to appreciate the fact that two persons can travel in the cabin and policy by the 2nd respondent also covers two persons traveling in the cabin. In view of the same, the finding of the Tribunal that the deceased was a gratuitous passenger and 2nd respondent is not liable to pay compensation is set aside. In view of the fact that as per the un-controverted evidence of P.Ws.1 and 2, that the deceased was a coolie under 1st respondent and he travelled in the cabin, this Court is of the considered view that the 2nd respondent as insurer of the vehicle belonging to the 1st respondent is liable to pay the compensation to the appellants.

10. In the result, the appeal is allowed and the compensation of a sum of Rs.15,47,000/- awarded by the Tribunal to the appellants as compensation is confirmed. The 2nd respondent is directed to deposit the award amount with interest, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.385 of 2009. On such deposit, the 1st appellant is permitted to withdraw her share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalized Bank, till they attain majority. The 1st appellant, mother of the appellants 2 to 4 is permitted to withdraw the accrued interest amount once in three months for the welfare of the minor appellants 2 to 4. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal), Ariyalur.

2. The New India Insurance Co. Ltd., Kerala,
First Floor, Tarip, Town Hall (Opp),
Thirur 676101,
Kerala State.

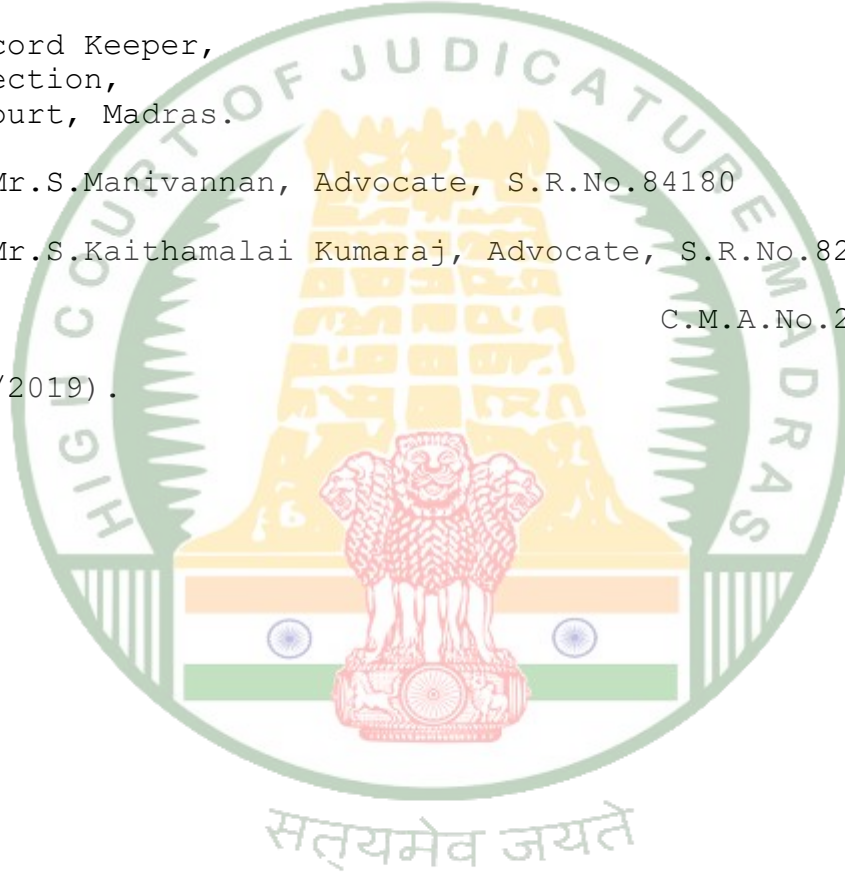
3. The Record Keeper,
V.R. Section,
High Court, Madras.

+1 cc to Mr.S.Manivannan, Advocate, S.R.No.84180

+1 cc to Mr.S.Kaithamalai Kumaraj, Advocate, S.R.No.82856

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GP(CO)
SSM(19/03/2019).



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