

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2545 of 2018  
and  
C.M.P.No.19335 of 2018

National Insurance Company Limited,  
Kalpetta Branch,  
Kalana Shopping Complex,  
Main Road, Kalpetta,  
Wayanad, Kerala - 673 121.

.. Appellant/2<sup>nd</sup> Respondent

Vs.

1.Moidheen

2.Jeenath

... Respondents/Petitioner 1&2

3.Johny S/O Ulahanan

.. Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2018 made in M.A.C.T.O.P.No.634 of 2014, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mrs.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 26.03.2018 made in M.A.C.T.O.P.No.634 of 2014, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

2.The appellant/Insurance Company is second respondent in M.A.C.T.O.P.No.634 of 2014, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur. The first and second respondents, who are the claimants in the above said claim petition, claiming a sum of Rs.20,00,000/- as

compensation for the death of their son viz., Mohammad Shabik, who died in the accident that took place on 27.04.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the auto belonging to the third respondent and directed the appellant to pay a sum of Rs.11,48,400/- as compensation to the respondents 1 and 2/claimants.

4.Against the said award dated 26.03.2018 made in M.C.O.P.No.634 of 2014, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has not properly appreciated the evidence of R.W.1 and R.W.2 examined on behalf of the appellant and erroneously fixed the liability on the appellant to pay the compensation to the first and second respondents. R.W.1, an Assistant from R.T.O., has categorically stated that vehicle in question is a commercial vehicle and only driver is permitted to travel. R.W.2 employee of the appellant, has deposed about policy taken by the third respondent is only Act policy and therefore, appellant is not liable to pay any amount to the first and second respondents. The Tribunal failed to see that the deceased did not die due to the injuries sustained in the accident and in any event, compensation awarded by the Tribunal is excessive. Therefore, he prayed for setting aside the award passed by the Tribunal.

6.Heard the learned counsel appearing for the appellant and perused the materials on record.

7.The contentions raised by the learned counsel for the appellant are without merits and contrary to the records. The Tribunal has considered the postmortem report and cause of death mentioned therein and rightly held that the deceased died due to the injuries sustained in the accident. As far as policy issued by the appellant is concerned, R.W.2, employee of appellant, even though has stated that policy is Act policy, has admitted that third respondent/owner of the vehicle has paid Rs.100/- to cover insurance for owner-cum-driver and also paid Rs.50/- to cover WC employees. R.W.1, Assistant from R.T.O., has deposed that driver cannot load or unload goods in the vehicle. The admitted facts are that the deceased, who traveled along with goods as load man is covered under the policy issued by the appellant and appellant is liable to pay compensation to the first and second respondents. The Tribunal has accepted all the above facts in proper perspective and held that the deceased

died due to the injuries sustained by him in the accident that took place on 27.04.2014. The appellant is liable to pay compensation as policy issued by the appellant covers load man. Considering that the deceased was a load man and there is no contra evidence with regard to fixing notional income as well as compensation awarded by the Tribunal under different heads are not excessive, this Court is of the considered view that there is no error in the findings of the Tribunal warranting interference by this Court.

8.In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit entire amount awarded by the Tribunal along with accrued interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw the entire award amount as per the apportionment made by the Tribunal, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk/kj

To

1.The Motor Accidents Claims Tribunal  
I Additional District Judge  
Tiruppur.

2.The Section Officer/Record Clerk,  
VR Section High Court,Madras.

+1cc to Mr.N.M.Surekha, Advocate, S.R.No.78356

CMA.No.2545 of 2018  
and C.M.P.No.19335 of 2018

VGI (CO)  
GSP (31/01/2019)