



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018
(Reserved on 18.09.2017)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.592 of 2017

and

CMP(MD)No.6215 of 2017

Divisional Manager,
Royal Sundaram Alliance Insurance Company Ltd.,
Vannarapettai,
Tirunelveli.

... Appellant/Petitioner

vs.

- 1) Subalakshmi
- 2) Minor Mariselvi
(2nd respondent minor represented by her mother and
natural guardian the 1st respondent herein)
- 3) Kuruvammal
- 4) Muthumariappan Chettiyar ...1 to 4 Respondents/Petitioners
- 5) Manikandan
- 6) Krishnamoorthy ...5 & 6 Respondents/Respondents 2&3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the fair and decreetal order dated 07.12.2015 made in
MCOP.No.96 of 2014 on the file of the Motor Accidents Claims
Tribunal, Principal Sub Judge, Tenkasi.

For Appellant	: Mr.M.E.Ilango
For R1 to R4	: Mr.S.A.Ganapathyraman
For R5 & R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair
and decreetal order dated 07.12.2015 made in MCOP.No.96 of 2014 on
the file of the Motor Accidents Claims Tribunal, Principal Sub
Judge, Tenkasi.

2. In an accident which occurred on 29.05.2013, one Jegajothi
Mariappan died. Wife, minor daughter and parents of the deceased
laid a claim petition in MCOP.No.96 of 2014 on the file of the Motor
Accidents Claims Tribunal, Principal Sub Judge, Tenkasi, claiming
compensation of Rs.30,00,000/-, contending that on 29.05.2013, after
finishing construction contract work, while the deceased was



travelling along with the construction work materials as owner of the goods in the Load Auto bearing registration No.TN 69 AV 2752 belonging to the 6th respondent insured with the appellant insurance company, the Load Auto got capsized due to the rash and negligent driving of the driver/5th respondent and Jegajothi Mariappan died on the way to Hospital.

3.The appellant insurance company resisted the claim contending that the driver of the offending vehicle namely, Load Auto bearing registration No.TN 69 AU 2752 belonging to the 6th respondent did not possess a valid and effective driving licence at the time of accident and further the deceased travelled in the vehicle as gratuitous passenger and therefore, the insurance company is not liable to pay compensation.

4.Upon analysis of oral and documentary evidence, the Tribunal rejected the contention that the deceased travelled in the vehicle as gratuitous passenger and held that the insurance company is liable to pay compensation to the claimants and awarded compensation of Rs.12,96,864/- with 7.5% interest per annum from the date of claim petition till the date of payment, however, accepting the contention of the insurance company that at the time of accident, the 5th respondent drove the vehicle in question without a valid driving licence with proper badge endorsement, the Tribunal directed the appellant insurance company to pay compensation at the first instance and thereafter recover the same from the owner of the offending vehicle/6th respondent herein.

5.Aggrieved by the said judgment and decree passed by the Tribunal, the insurance company has come up with the present appeal mainly challenging the award on two folds namely,

i)the Tribunal erred in holding that the deceased did not travel in the offending vehicle as gratuitous passenger; and
ii)Even after establishing that the driver of the offending vehicle did not possess driving licence with proper badge endorsement, the Tribunal erroneously ordered pay and recovery instead of total exoneration.

6.Heard the learned counsel for the appellant and respondents 1 to 4/claimants. Despite service of notice, the respondents 5 and 6/driver and owner of the offending vehicle respectively, have not chosen to appear in person or through pleader.

7.Perusal of the impugned judgment shows that wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. PW2 is an eye witness and Exs.P1 to P10 have been marked on the side of claimants. On behalf of appellant insurance company, Assistant Manager of the appellant company has been examined as RW1 and insurance policy of the offending vehicle has been marked as Ex.R1.

8.Perusal of the deposition of PW2 in the typedset of papers filed by respondents/claimants shows that on 29.05.2013, after witnessing Kovilpatti Maalaiamman Temple festival, PW2 was waiting

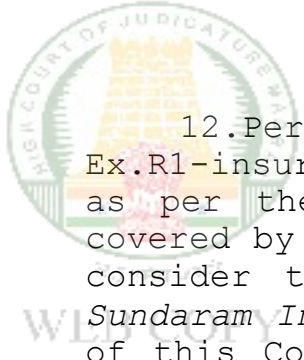


to go to his home. At that time, he stopped the offending vehicle belonging to the 6th respondent loaded with construction materials and boarded the Auto to reach Kovilpatti new bus stand. PW2 has further deposed that about 2.30 a.m., while the Auto was proceeding on Kovilpatti-Ilaiyarasanenthal road, the driver of the Auto drove the same in a rash and negligent manner without following the traffic rules and suddenly turned the Auto. In this process, the Auto was thrown away and got capsized in its left side. PW2 has further deposed that the deceased Jegajothi Mariappan who seated next to the driver sustained grievous injuries and died on the way to Hospital and PW2 who seated in the back side of Auto had jumped from the Auto. PW2 has also deposed that had the driver of the Load Auto driven the same following the traffic rules, accident would not have happened.

9. Upon perusal of the evidence of PW2, Ex.P.1-FIR lodged by one Petchi, who travelled in the Load Auto and Ex.P.3-Motor Vehicle Inspector's report, Ex.P4-Observation Mahazar, Ex.P5-Sketch and Ex.P6-Charge sheet, the Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the Load Auto. The said finding in the considered opinion of this Court is based on evidence and therefore, the same is confirmed.

10. As regards the contention that the deceased travelled as a gratuitous passenger in the offending vehicle, the insurance company contended that when admitted facts and evidence on record is available that the deceased travelled as gratuitous passenger, the insurance company need not establish the said fact. In support of the same, the insurance company relied on the entries in Ex.P1-FIR lodged by one Petchi, who also travelled in the offending vehicle, wherein, she has stated that after witnessing Maalaiamman Temple Festival to reach Kovilpatti new bus stand, she boarded the offending Load Auto and travelled along with the deceased and others. However, the Tribunal rejecting the said contention, held that in FIR, the informant has not stated that persons who travelled along with her, came for witnessing the Maalaiamman temple festival and therefore, it cannot be construed that the deceased travelled as gratuitous passenger in the Load Auto like Petchi who after witnessing the temple festival boarded the offending vehicle to reach bus stand.

11. A conjoint reading of the oral testimony of PW2 and Ex.P1-FIR would go to show that the deceased did not travel as gratuitous passenger and from the perusal of the entire evidence, it appears that the deceased travelled in the vehicle as owner of the goods and Petchi, PW2 and one Hariharasudhan alone travelled as gratuitous passenger to reach Kovilpatti new bus stand. Further, no rebuttal evidence was let in by the insurance company to disprove the contention of the claimants that the deceased travelled as owner of the goods.



12. Perusal of the impugned judgment shows that through RW1, Ex.R1-insurance policy of the offending vehicle, has been marked and as per the said policy, two persons including driver alone are covered by insurance. At this juncture, this Court deems it fit to consider the decision reported in 2012 (1) TN MAC 89(DB) *Royal Sundaram Insurance Company vs. Ayyakannu*, wherein, a Division Bench of this Court has held that the number of passengers permitted to travel in the goods carrier that includes driver, cleaner, loadman, etc., would be determined by the seating capacity of the vehicle by the State Government while issuing the registration certificate and if more number of persons were permitted to travel in the goods carrier and more number of claim petitions were filed in support of number of persons permitted to travel and covered by the policy of insurance, the insurance company is liable to compensate only those persons who are covered by the policy of insurance and rest are to be compensated only by the owner of the vehicle and not by the insurance company.

13. In the case on hand, from the perusal of the evidence of PW2 and Ex.P1-FIR, this Court is of the view that the deceased did not travel as gratuitous passenger.

14. Upon perusal of the impugned judgment, this Court is of the view that the Tribunal is erred in ordering pay and recovery solely relying on the statement made by the insurance company that the driver of the offending vehicle did not possess a valid driving licence and badge endorsement. Perusal of the evidence of RW1 and his cross examination enclosed in the typedset of papers do not throw any light to the said contention. No material has been placed before the Tribunal to prove that the insurance company had sent legal notice to the driver of the offending vehicle to produce the driving licence who remained ex parte before the Tribunal. Even if the insured or the driver is made as a party to the claim petition and if they fail to appear before the claims Tribunal, recourse should be made to ascertain the licence particulars from the office of the Regional Transport Officer. The concerned Regional Transport Officer, within whose jurisdiction, the driver ordinarily resides, as per the address furnished in the claim petition, would be competent to ascertain from the records maintained by him to speak as to whether the driver at the time of accident did possess a licence or not. Mere sending notices to the owner or the driver of the vehicle also would not amount to proof of no licence or the kind of licence required to drive, etc.

15. In the case on hand, the insurance company neither sent notice to owner or driver of the offending vehicle to produce licence nor took steps to ascertain the licence particulars of the driver from the concerned Regional Transport Office. Therefore, the finding of the Tribunal ordering pay and recovery is modified to the effect that the appellant insurance company alone is liable to pay compensation to the claimants. Considering the facts and circumstances of the case, the quantum of compensation of



Rs.12,96,864/- with 7.5% interest per annum awarded to the wife, minor daughter and parents of the deceased cannot be said to be excessive or bonanza warranting interference at the hands of this Court.

16. The appellant is directed to deposit Rs.12,96,864/- awarded by the Tribunal with 7.5% interest per annum from the date of claim petition till the date of payment, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants 1, 3 and 4 are permitted to withdraw their respective shares with respective interest by making necessary application before the Tribunal. As far as the share of 2nd respondent/minor claimant is concerned, her share with interest shall be deposited in a Nationalized Bank in Fixed Deposit till she attains majority. The interest on the said minor's share is permitted to be withdrawn by the 1st respondent once in three months directly from the bank.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Tenkasi.

Copy to:-

The Section Officer, V.R. Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr. M. E. Ilango, Advocate, SR.No.42897

+One cc to Mr. S. A. Ganapathy Raman, Advocate, SR.No.42678

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RL/6C/5P/KK/SAR1/6/2/2018