

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3218 2006 and
M.P.No.2 of 2006

National Insurance Company Ltd.,
Branch Manager,
638, Cuddalore Main Road, (Upstairs),
Authoor 636 102. Appellant/2nd Respondent

Vs.

1.A.Sampath
2.Minor Krishnasamy @ Manikandan
3.Minor Sakkaradevan @ Surya
(Minors 2 & 3 represented by their guardian
and father 1st respondent)
4.Neelamegam Respondents/Petitioners 1 to 3/1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 25.11.2005 made in MCOP No.180 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi.

For Appellant : Mr.S.Vadivel

J U D G M E N T

This appeal is directed against the judgment and decree dated 25.11.2005 passed by the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi, in MCOP No.180 of 2005.

2.It is the case of the claimants/respondents before the Tribunal that one Alamelu, who was a load woman, aged 30, travelled in the 4th respondent's vehicle (Tractor-cum-Trailer) bearing Registration No.TN28 B-1666, insured with the appellant / Insurance company on 28.02.2004. Due to rash and negligent act on the part of the driver, the said vehicle

capsized. As a result of the same, the said Alamelu fell down from the vehicle and succumbed to the injuries. Hence, the respondent/claimants being the legal heirs of the deceased, filed a claim petition claiming compensation of Rs.3,00,000/- before the Tribunal.

3.The Tribunal, on a consideration of the materials placed before it, has come to a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the tractor-cum-trailer and accordingly, fastened the liability on the appellant Insurance company with a right to recover the same from the owner of the vehicle and ultimately, awarded a total compensation of Rs.2,03,300/- with interest at 9%pa from the date of petition, the break up details of which read thus:-

Loss of dependency (Rs.12,000x16)	-	Rs.1,92,000/-
Funeral Expenses	-	Rs. 2,000/-
Transport expenses	-	Rs. 1,000/-
Damage to clothes/ personal materials	-	Rs. 300/-
Loss of love and affection	-	Rs. 8,000/-

Total	-	Rs.2,03,300/-

Aggrieved over the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel for the Appellant has disputed only the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay compensation to the respondents/ claimants. According to him, the deceased had travelled in the Tractor-cum-Trailer as an unauthorised passenger and hence, the appellant is not liable to pay compensation.

5.Though this appeal was admitted way back in the year 2006, the Appellant/Insurance Company has not taken steps to serve papers on the respondents, even at this distant point of time. However, considering the paucity of time, this Court is inclined to dispose of this appeal, on merits.

6.It was put forth before the Tribunal on the side of the Insurance Company that there was violation of policy conditions by the owner of the vehicle by permitting the deceased to travel in the trailer unauthorisedly. Ex.P1 is the First Information Report, which reveals that the accident had occurred due to the rash and negligent driving of the driver of the tractor-cum-trailer. As per Ex.P3-motor vehicle Inspector's report, there

was no mechanical defect at the time of accident. Ex.P4 insurance policy covered the risk of the offending vehicle. Taking note of those materials and evidence let-in by the respondents/claimants, the Tribunal was of the view that the accident had happened due to the rash and negligent driving of the driver of the offending vehicle. However, the Tribunal, considering the evidence of R.W.1 and R.W.2 adduced on the side of the appellant insurance company, has given a finding that in violation of the policy condition, the deceased had travelled in the trailer attached with the tractor as a load woman, unauthorisedly and died due to the injuries received in the accident and hence, the Insurance Company has to pay the compensation to the respondents/claimants and recover the same from the fourth respondent/owner of the tractor. This Court finds no reason to interfere with the said findings rendered by the Tribunal and hence, the same are hereby confirmed.

7. Since the quantum of compensation is not questioned by the learned counsel for the appellant Insurance Company, this Court confirms the compensation of Rs.2,03,300/- with interest at 9%pa from the date of petition.

8. In the result, this appeal is dismissed. No costs. The Appellant/ Insurance Company is directed to deposit the entire compensation with interest, as ordered by the Claims Tribunal, less the amount if any already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. It is reported that the first respondent/guardian of the minor claimants died and in view of the same, the minor respondents 2 and 3, who are the legal heirs of the first respondent, are entitled to receive the share of their father in equal proportion. Since the minor respondents 2 and 3 would have attained majority by now, on such deposit being made by the Insurance Company, the respondents 2 and 3 are permitted to withdraw the entire compensation to be shared between them equally, on making proper application before the Tribunal. The Insurance Company shall thereafter, recover the compensation so deposited, from the owner of the vehicle, ie., the fourth respondent herein, in accordance with law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv/rk

To

1.The Motor Accident Claims Tribunal,
Fast Track Court, Kallakurichi.

2.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S.Vadivel, Advocate SR.62521

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PA (CO)
CB (04/09/2020)



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