

7IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.450 of 2005

1. Jeyanthi
2. Pushba
3. Padma
4. Saraswathi
5. Loganathan

...Appellants

Vs.

1. S.Kundu Pasha
2. United India Insurance Co.,
72, Gandhi Road, Arakkonam.
3. R.Muniretnam
4. Ehanathan

...Respondents

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the orders dated 19.03.2004 passed in MCOP No.3222 of 1996 by the VI Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants : Mr.K.Varadakamaraj

For Respondents : Mr.S.D.Balaji for R1
A. Thayaparam-NA for R2
R3- Exparte before Lower Court
R4 Unclaimed

JUDGMENT

The appellants are the claimants in MCOP No.3222/1996 on the file of the VI Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2. The appellants/claimants filed the above claim petition under Section 166 of the Motor Vehicles Act read with Rule 3 of the Motor Accident Claims Tribunal Rules seeking compensation of Rs.2,85,000/- for the death of one Giri, husband of the first claimant and father of the claimants 2 to 5.

3. The case of the claimants is that the deceased Giri was travelling in a tempo van bearing registration No.TAJ 5469 as a cleaner on 17.07.1995 and at about 10.00 a.m., when the van was nearing Pothatturpet, Thiruthani Junction, the driver of the van drove the vehicle rashly and negligently as a result of which, the tempo van toppled. The further contention of the claimants is that the deceased Giri died on the spot and others, who were travelling in the same vehicle sustained injuries. According to the claimants, the rash and negligent driving of the driver of the van was the cause of accident and that since the owner of the vehicle insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation.

4. The first respondent filed a counter contending that he sold the vehicle to one Munirathnam, who in turn sold the same to one Ekkanathan. Therefore, an amendment petition in I.A.No.1983 of 2001 was filed for impleading the said Munirathnam and Ekkanathan as respondents 3 and 4 and the same was allowed on 27.07.2007 by the Tribunal.

5. The 3rd respondent remained absent before the Tribunal and therefore, he was set exparte. The 4th respondent in his counter had contended that he is the owner of the vehicle bearing registration No. TAJ 5469. The 2nd respondent, United India Insurance Company also filed a detailed counter and contended that since the deceased Giri was travelling as a gratuitous passenger in the goods vehicle, they are not liable to pay compensation to the claimants.

6. The learned VI Judge, Court of Small Causes, Chennai, after analysing the evidence on record, concluded that 1) since the deceased was a gratuitous passenger in the van, which met with an accident, the insurance company is not liable to pay compensation to the claimants and 2) the fourth respondent, the owner of the vehicle alone should pay compensation of Rs.2,00,000/- with interest at the rate of 9% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal.

7. Mr.K.Varadakamaraj, learned counsel appearing for the appellants/claimants contended that when the claimants have specifically contended that the deceased was a cleaner in the tempo van, the Tribunal should have fixed the liability on the insurance company to pay compensation to the claimants. He would further contend that even if it is assumed that the deceased was travelling in the goods vehicle as a gratuitous passenger, the insurance company is liable to pay compensation

to the claimants, as per the decision rendered by a Single Judge of this court in National Insurance Co. Ltd. Vs. N.Thenvelan and others reported in 2019(2) TN MAC 251. In the said decision, the learned Single Judge of this court referred the following decisions

1. National Insurance C. Ltd. Vs. Balijit Kaur reported in 2004(1)

TN MAC 1 (SC)

2. United India Insurance Co. Ltd. Vs. Selvam reported in 2005(2)

TN MAC 345 (DB)

and held that though the insurance company is not liable to pay compensation to a gratuitous passenger for whom no insurance premium is paid, the law laid down in the decision in National Insurance Company Limited. Vs. Balijit Kaur reported in 2004(1) TN MAC 1 (SC) would have only prospective effect from the date of the judgment of the Honorable Supreme Court i.e. from 06.01.2004 and that in the case of accidents, which took place prior to 06.01.2004, the position of law was that the insurance company shall have to pay compensation to the claimant and recover the same from the owner of the vehicle.

8. A perusal of the original claim petition shows that the claimants have contended that the deceased was working as a cleaner in the van bearing registration No. TAJ 5469 and was also a part time tailor. However, the Tribunal had held that the deceased was a gratuitous passenger on the date of accident mainly on the basis that the claimants have indicated in the claim petition that the occupation of the deceased as cleaner and tailor (part time) by hand written in ink. It is further concluded by the Tribunal that these corrections were made subsequent to the filing of the claim petition. It is incomprehensible as to how the Tribunal came to the conclusion that the said corrections found in the main claim petition were made subsequent to the filing of the claim petition and if so, whether any action was initiated against the erring staff of the court. All these details are not found in the order.

9. The PW1 (1st claimant) had clearly deposed that her husband was working as a cleaner in the van, which met with an accident. No contra evidence was adduced in this regard on the side of the respondents. The 4th respondent who contended that he is the present owner of the goods van, which met with an accident, had not specifically averred in his counter that the deceased was not working as a cleaner under him. Therefore, the conclusion of the Tribunal that the deceased was gratuitous passenger on the date of accident cannot be sustained.

10. A perusal of the records shows that though the 4th respondent had contended that he purchased the van, he has not filed the registration certificate of the vehicle. Therefore, as on date of accident, the first respondent was the owner of the vehicle. However, since I have already held that the deceased was working as a cleaner in the van, the 2nd respondent, insurance company is liable to pay compensation to the claimants.

11. As regards the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the claimants. The accident took place in the year 1995 and the Tribunal had awarded a compensation of Rs.2,00,000/- to the claimants, considering all the aspects of the claim made by the claimants. The award passed by the Tribunal seems to be reasonable and therefore, I do not see any reason to upset the same. However, the interest awarded by the Tribunal is reduced from 9% to 7.5% p.a.

12. In the result,

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The orders passed by the Tribunal fixing the liability on the 3rd respondent to pay compensation to the claimants is set aside. However, quantum of compensation awarded by the Tribunal is upheld by reducing the interest portion alone from 9% to 7.5% per annum.

(iii) The 2nd respondent, insurance company is directed to deposit the entire compensation awarded by the Tribunal together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent/insurance company, the claimants are at liberty to withdraw the same, after following due process of law and as per the apportionment made by the Tribunal.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The VI Judge, Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

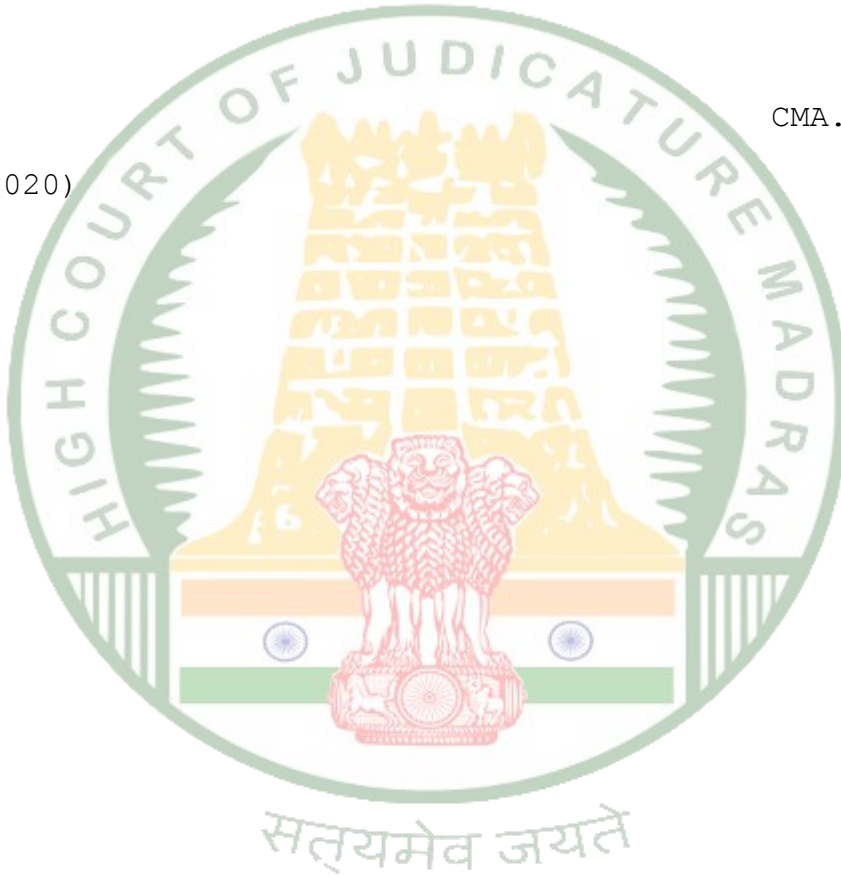
2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Varadakamaraj, Advocate sr 85741.

+1 Cc to Mr.P. Sukumar, Advocate sr 85976.

SS(CO)
SP(09/09/2020)

CMA.No.450/2005



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