

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1278 of 2015

and

M.P.No.1 of 2015

The Manager,  
National Insurance Company Limited,  
7, Raja Street, Post Box No.19,  
Gobichettipalayam - 638 476. .. Appellant/6<sup>th</sup> Respondent

Vs.

1.Sekar  
2.Selvi  
3.Suseela  
4.Suresh  
5.S.Vethanayagam  
6.N.Ayyavoo  
7.The Manager,  
Reliance General Insurance Company Limited,  
408, 3<sup>rd</sup> Floor, Perundurai road,  
Erode - 638 011.  
8.O.Biroj  
9.E.K.Saleem  
10.The Manager,  
National Insurance Company Limited,  
Karthikeya Complex,  
Mettur Main Road, Bhavani. .. Respondents  
(R10 given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.10.2013 made in M.C.O.P.No.200 of 2011 on the file of the Motor Accidents Claims Tribunal, 4<sup>th</sup> Additional District Court, Erode District, Bhavani.

For Appellant : Mr.D.Bhaskaran  
For RR 1 to 4 : Mr.C.Kulanthaivel  
For RR 5 & 6 : No appearance  
For R7 : Mr.E.Rajadurai  
for Mr.N.Vijayaraghavan

RR8 & 9 - No Such Orders  
R10 - Given up

## J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 09.10.2013 made in M.C.O.P.No.200 of 2011 on the file of the Motor Accidents Claims Tribunal, 4<sup>th</sup> Additional District Court, Erode District, Bhavani.

2.The appellant is the 6<sup>th</sup> respondent in M.C.O.P.No.200 of 2011 on the file of the Motor Accidents Claims Tribunal, 4<sup>th</sup> Additional District Court, Erode District, Bhavani. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Lakshmi, who died in the accident that took place on 31.03.2011.

3.According to respondents 1 to 4, on 31.03.2011 at 11.30 A.M., while the deceased was travelling in a Minidor bearing Registration No. TN 47 M 0670 belonging to the 9<sup>th</sup> respondent on Bhavani Main Road, a Tata Ace bearing Registration No. TN 36 W 0155 belonging to the 6<sup>th</sup> respondent came in a rash and negligent manner and dashed against the Minidor and caused the accident. Due to the accident, the deceased succumbed to injuries on 01.04.2011. Hence, the respondents 1 to 4/claimants claimed compensation against the respondents 5 to 10 and appellant.

4.The respondents 5, 6 and 9 remained exparte before the Tribunal.

5.The seventh respondent/Insurance Company, being the insurer of the Tata Ace in the counter statement has stated that the respondents 1 to 4/claimants have to prove that accident occurred only due to rash and negligent driving by the fifth respondent/driver of the Tata Ace by proper evidence. The respondents 1 to 4 have also to prove that the deceased travelled in the Minidor as load women. The respondents 1 to 4 have to prove that the Minidor vehicle has valid policy and permit at the time of accident. In any event, the compensation claimed by the respondents 1 to 4/claimants are highly excessive and prayed for dismissal of the claim petition.

6.The eight respondent/owner of the Tata Ace in his counter statement has stated that the accident occurred only due to rash and negligent driving by the driver of the Minidor vehicle and the respondents 1 to 4 have to prove the avocation and income of the deceased by proper material evidence. At the time of accident, the eighth respondent has valid driving license and prayed for dismissal of the claim petition.

7.The appellant/Insurance Company, being the insurer of the Minidor in the counter statement has stated that the Minidor was registered as LMV Goods Vehicle and the policy insured is "Liability Policy". As per the provision of the Motor Vehicles Act and Policy conditions, in goods vehicle, no one should be carried on the back side, except goods. Since the deceased Lakshmi has travelled on the backside of the vehicle, in violation of policy conditions as well as provision of Motor Vehicles Act, the appellant/Insurance Company, being the insurer of the Minidor is not liable to pay any compensation to the respondents 1 to 4/claimants. The compensation claimed by the respondents 1 to 4/claimants are highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal on the side of the respondents 1 to 4/claimants, three witnesses were examined as P.W.1 to P.W.3 and 10 documents were marked as Exs.P1 to P10. On the side of the respondents 5 to 10 and appellant, five witnesses were examined as R.W.1 to R.W.5 and 4 documents were marked as Exs.R1 to R4.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the drivers of both the Tata Ace belonging to the 6<sup>th</sup> respondent and Minidor belonging to the 9<sup>th</sup> respondent and awarded a sum of Rs.6,95,600/- as compensation to the respondents 1 to 4/claimants and directed the seventh respondent, being the insurer of the Tata Ace to pay 50% of the award amount and the appellant, being the insurer of the Minidor to pay 50% of the award amount.

10.Challenging the said award dated 09.10.2013 made in M.C.O.P.No.200 of 2011 fixing negligence on the part of the driver of the Minidor vehicle belonging to the 9<sup>th</sup> respondent and 50% liability on the appellant/Insurance Company, the appellant has come out with the present appeal.

11.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal considering the evidence of P.W.2, P.W.3 and Ex.P4, ought to have held that accident occurred only due to rash and negligent driving by the driver of the Tata Ace belonging to the 6<sup>th</sup> respondent. The Tribunal ought to have held that owner and insurer of the Tata Ace bearing Registration No. TN 36 W 0155 alone are liable to pay the compensation. The Tribunal failed to adjudicate the issue of liability properly. The Tribunal failed to consider the seating capacity of the Minidor vehicle belonging to the 9<sup>th</sup> respondent, which is meant only for driver. The Policy issued by the appellant/Insurance Company is only 'Act policy' and it does not cover the liability of deceased.

The deceased was an unauthorized passenger. The Tribunal ought to have exonerated the appellant/Insurance Company and prayed for setting aside the award passed by the Tribunal.

12.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the deceased travelled as load woman and not as unauthorized passenger. The Tribunal has given valid reason for fixing negligence, liability and for awarding compensation and prayed for dismissal of the appeal.

13.Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 4/claimants and perused the entire materials on record.

14.From the materials available on record, it is seen that P.W.2/eye-witness has deposed that accident has occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the 6th respondent. While so, R.W.3/Sub Inspector of Police has deposed that F.I.R. is registered against the driver of the Minidor vehicle belonging to the 9<sup>th</sup> respondent and insured with the appellant, in which the deceased travelled. R.W.5/driver of the Tata Ace belonging to the 6<sup>th</sup> respondent has deposed that at the time of accident, the driver of the Minidor vehicle over took another vehicle and came and dashed against the Tata Ace and driver of the Minidor vehicle alone is responsible for the accident. The Tribunal considering the above materials and the facts that two vehicles involved in head on collision, held that both the drivers are equally responsible for the accident. On such conclusion, the Tribunal held that appellant as well as seventh respondent, being the insurers of the Minidor vehicle and Tata Ace respectively are equally liable to pay the compensation. There is no error in the said finding of the Tribunal warranting any interference by this Court.

15.From the award passed by the Tribunal, especially from the evidence of P.W.3/Supervisor of Puvi Leathers, it is seen that the deceased travelled as loadwomen and representative of the owner of the goods. Though appellant/Insurance Company has examined S.Subramaniam as R.W.3, who is an official of appellant/Insurance Company, he has not let in any evidence to disprove the evidence of P.W.3 and substantiate their contention that deceased travelled as unauthorized passenger and not as loadwomen or representative of the goods. In such circumstances, the Tribunal held that appellant/Insurance Company being the insurer of the Minidor vehicle is liable to pay 50% of the compensation. Hence, there is no error in the reasoning of the Tribunal directing the appellant/Insurance Company to pay 50% of the award amount.

16.In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.6,05,600/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants, along with interest and costs is confirmed. The appellant-Insurance Company and the seventh respondent/Insurance Company are directed to deposit 50% of the award amount i.e., Rs.3,02,800/- each, along with proportionate interest and costs, less the amount already deposited, if any, 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.200 of 2011 on the file of the Motor Accidents Claims Tribunal, 4<sup>th</sup> Additional District Court, Erode District, Bhavani. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment made by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

krk

To

1.The 4<sup>th</sup> Additional District Judge,  
Motor Accidents Claims Tribunal,  
Bhavani,  
Erode District.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 104187  
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 103972  
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 104601

C.M.A.No.1278 of 2015

GP (CO)  
GN(16/10/2020)