

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.1131 of 2012

The Branch Manager,
The Oriental Insurance Co.Ltd.,
JLC Building, Katpadi Road,
Vellore - 632 004.

...Appellant/3rd Respondent

Vs.

Selvam (died)
Son of Natesan
1.Mrs.Vasanthan
2.Siva (Minor)
3.Ashok Kumar (Minor)
4.Meena (Minor)
(Respondents 2 to 4 minors
rep.by mother & NF 1st respondent)
5.K.Ramesh
6.Mr.K.Sukumar
(Respondents 5&6 exparte
before the Tribunal)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.12.2011, in M.C.O.P.No. 615 of 2010, on the file of the Motor Accidents Claims Tribunal, (Additional District Court), Krishnagiri.

For Appellant : Mr.N.Vijayraghavan
For R1to R4 : Mr.Mukund R.Pandian
For R5&R6 :Exparte before the Tribunal

J U D G M E N T

The Insurance Company is the appellant herein.

2. Challenging the order of pay and recovery made in M.C.O.P.No.615 of 2010, the learned counsel for the Insurance Company would submit that the deceased was travelling in the vehicle / lorry as unauthorized passenger and therefore, the same amounts to violation of the contractual liability and hence, the Insurance Company is not liable to pay the compensation and therefore, he seeks to set aside the order of pay and recovery passed by the Tribunal.

3. The learned counsel for the claimants/respondents 1 to 4 would submit that the deceased was working as cleaner in the said lorry and as such he is covered under the policy of the insurance.

4. Heard both sides and perused the records.

5. The brief averments made in the claim petition are that on 24.11.2006, Kanmani was proceeding in the lorry bearing Registration No.TN 23 3195, as a cleaner towards Hosur in the National Highway 7 road, while the lorry was going towards Hosur, at Melumalai stop, it was driven by sixth respondent's driver in a rash and negligent manner and lost control and came in the reverse direction and hit on the road divider and hit on the rock and capsized. Due to the impact, Kanmani sustained fatal injuries on his vital organs and died on the spot itself. The Soolagiri Police has registered a case against the driver of the said lorry in Crime No.408 of 2006, under Sections 279, 304(A) of I.P.C.

6. The Tribunal had analysed the oral and documentary evidence and held that Exhibit P1 is the copy of FIR wherein, a case in Crime No.408 of 2006, under Sections 279, 304(A) I.P.C., had been registered against the driver of the lorry with Registration No.TN 23 3195 on the basis of the complaint lodged by one Subramani. It is seen from Exhibit P1 and the evidence of P.W.1 that the deceased was employed as a Cleaner in respect of the said lorry belonging to the sixth respondent and on 24.11.2006, when the deceased was travelling in the said lorry as a Cleaner, at about 4.45 a.m., when the said lorry lost its control due to rash and negligent driving of the driver and it came in the reverse direction and hit on the divider and overturned; as a result of which, the husband of P.W.1 died on the spot itself. The deceased was travelling in the said goods vehicle as an unauthorized passenger and hence, the appellant-Insurance Company is liable to indemnify the sixth respondent and the driver and hence, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the offending lorry, is hereby confirmed.

7. On the point of quantum, after hearing both sides, the quantum arrived as such by the Tribunal is found to be reasonable and same is hereby confirmed.

8. On the point of liability, the Insurance Company has taken a specific plea in the counter affidavit that the deceased was travelling in the said goods vehicle as unauthorized passenger. In support of the same, he relied upon Exhibit P1 FIR and Exhibit P3 the policy of Insurance.

9. Admittedly, though P.W.1 widow of the deceased claimant deposed that the deceased was employed as a cleaner in the said lorry at the time of accident, neither the owner of the lorry nor the driver was examined to show that the deceased was working as a cleaner in the said lorry at the time of accident. A reference to Ex.P1 would also show that the deceased had boarded the lorry along with one Subramani, [who lodged Ex.P1] at Pallikonda for proceeding to Hosur. Therefore, the Tribunal held that the deceased was travelling in the offending lorry as an unauthorized passenger. This Court finds that the above conclusion arrived at by the Tribunal is proper and also based on oral and documentary evidence, which does not call for interference.

10. In view of the Judgment of a Division Bench of this Court comprising K.K.Sasidharan.J and R.Subramanian.J in C.M.A.Nos.1529 to 1533 of 2015, dated:24.10.2018 [Bharati AXA General Insurance Company Limited Vs.Aandi and others], the Insurance Company cannot be made liable and the Insurance Company is exonerated from paying the compensation and they shall recover the amount already deposited by them, from the Tribunal, as the deceased travelled as an unauthorized passenger in the said vehicle. The Insurance Company is exonerated from paying the compensation.

11. The owner/sixth respondent herein is liable to pay the entire compensation as ordered by the Tribunal and pay and recovery clause in respect of the appellant/Insurance Company is set aside. The quantum awarded by the Tribunal is also hereby confirmed. On such deposit by owner of the vehicle, the first respondent/first claimant shall withdraw her share in respect of the compensation awarded by the Tribunal.

12. As far as the share of the minor respondents, namely respondents 2 to 4 herein, is concerned, the same shall be deposited in any Nationalised Bank in any interest bearing Fixed Deposit Scheme and the interest accrued thereon shall be withdrawn by the first respondent periodically and the said Fixed Deposit scheme shall be renewed periodically till the minors attain majority.

13. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(Additional District Court), Krishnagiri.

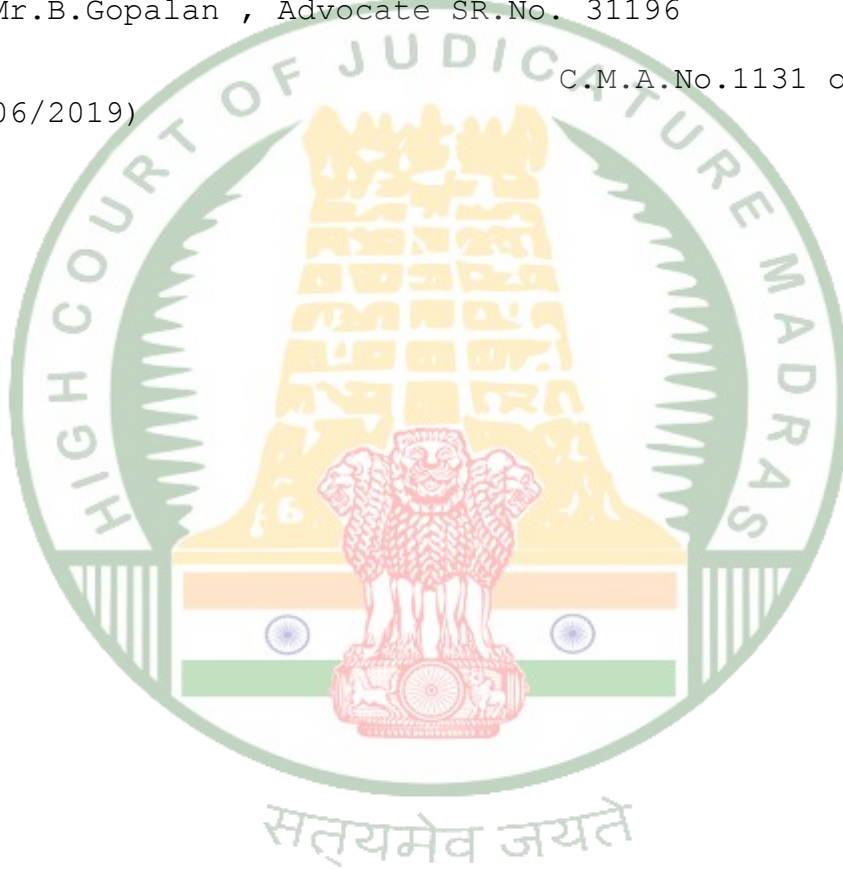
2. The Section Officer,
V.R.Section,High Court,
Chennai.

+lcc to Mr. Mukund R.Pandian, Advocate SR.No. 30660

+lcc to Mr.B.Gopalan , Advocate SR.No. 31196

C.M.A.No.1131 of 2012

A.SK(20/06/2019)



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