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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1715 of 2015
and M.P.No.1 of 2015

The Manager,
M/s.Bajaj Allianz General Insurance Co. Ltd.,
Chennai 6. .. Appellant/2nd Respondent

Vs.

1.Sathiya
2.Minor Kamali
(rep. By mother and natural guardian Sathiya)
3.Perumal
4.Pachiappan
5.Ambika
6.Minor Durairaj ..Respondents 1 to 6/Respondents 1 to 6
(rep. By mother and natural guardian
Sathiya)
7.P.Subramani .. 7th Respondents/1st Respondent
(Exparte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.10.2012 made in M.C.O.P.No.328 of 2009 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms.R.Sarala Devi

For R1 to R6 : Mr.K.Prasanna
for Mr.Mukund R.Pandian

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant-Insurance Company against the award dated 29.10.2012 made in M.C.O.P.No.328 of 2009 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P.No.328 of 2009 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 6



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5. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing liability on the appellant. The Tribunal failed to see that 9 persons traveled in the goods vehicle against the seating capacity of 3. In the FIR, it was mentioned as 9 persons traveled at the time of accident. The Tribunal ought to have seen that 4 persons traveled in the cabin and 5 persons traveled sitting on the top of the goods. The respondents 1 to 6 failed to prove that the deceased traveled as cleaner. The 7th respondent, owner of the lorry failed to appear before the Tribunal inspite of receiving notice. The Tribunal ought to have drawn adverse inference against the 7th respondent. The learned counsel appearing for the appellant further contended that the claim petition filed by the respondents 1 to 6 under Section 166 of the Motor Vehicles Act is not maintainable before the claims Tribunal and they ought to have filed claim petition only under the provisions of Workmen's compensation Act as the respondents 1 to 6 claim that the deceased traveled as cleaner under the employment of the 7th respondent and prayed for setting aside the award of the Tribunal. The learned counsel appearing for the appellant in support of his contentions, relied on the judgment reported in 2010 1 LW 161 [The Branch Manager, United India Insurance Co. Ltd., Vs. Chinnathambi @ Ramasamy and another].

<https://hcservices.ecourts.gov.in/hcservices/>



7. Heard learned counsel appearing for the appellant as well as the respondents 1 to 6 and perused the materials available on record.

8. From the materials on record, it is seen that the respondents 1 to 6 have contended that the deceased traveled as a cleaner at the time of accident. To substantiate the same, the 1st respondent has examined herself as P.W.1 and one Rangan as P.W.2 who traveled along with the deceased at the time of accident. P.W.2 deposed that the deceased traveled as cleaner. In Ex.P1-FIR it has been stated that the deceased traveled as cleaner. R.W.1 admitted the said statement in the FIR. The appellant did not appoint any investigator to find out in what capacity the deceased and others traveled in the goods vehicle and that the deceased traveled only as unauthorized passenger. R.W.1 in cross examination admitted that four persons traveled in the cabin and 5 persons traveled in the top of the goods. The appellant has not denied the contention of the respondents 1 to 6 that 4 persons traveled in the cabin. Considering all the above materials, this Court is of the considered view, the finding of the Tribunal that the deceased traveled as a cleaner in the goods vehicle is not perverse, warranting interference by this Court.

9. The learned counsel appearing for the appellant contended that the claim petition filed by the respondents 1 to 6 under Section 166 of the Motor Vehicles Act is not maintainable before the claims Tribunal and they ought to have filed claim petition only under the provisions of the Workmen's Compensation Act as the respondents 1 to 6 claim that the deceased traveled as cleaner under the employment of the 7th respondent. The said contention is untenable as per Section 167 of the Motor Vehicles Act. The legal heirs of the deceased who was an employee of the owner of the vehicle has an option either to file claim petition under Motor Vehicles Act or under Workmen's Compensation Act, but not under both the Acts. The said Section reads as follows:

"167. Option regarding claims for compensation in certain cases. -

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."



10. Section 167 of the Motor Vehicles Act clearly gives an option to the legal heirs of the deceased employee or employee himself, either to file claim petition before the Motor Accident Claims Tribunal or before the competent authority under the Workmen's Compensation Act. The judgment reported in 2010 1 LW 161 cited supra relied on by the learned counsel appearing for the appellant is not applicable to the present case. The facts of the said case relates to unauthorized passengers traveling in the goods vehicle. In the present case, the claim petition is filed claiming compensation for the death of the cleaner of the vehicle employed by the 7th respondent. The appellant has not disproved the contention of the respondents 1 to 6 that the deceased traveled as cleaner in the offending vehicle and he traveled in the vehicle in the capacity of the cleaner employed under the 7th respondent. The learned counsel appearing for the respondents 1 to 6 relied on the judgment reported in 2013 12 SCC 84 [Ramchandra Vs. Regional Manager, United India Insurance Co. Ltd.,]. In the said judgment, it was held that if the owner of the vehicle pays additional premium to cover his employees, then the employee or the legal heirs of the deceased employees are entitled to more compensation than what is provided under the Workmen's Compensation Act. In the present case, the appellant has not taken a stand that the 7th respondent did not pay any additional premium to increase the liability of Insurance Company for the risk of his employees. The appellant having failed to take such a stand, is not entitled to take a plea that the compensation awarded by the Tribunal is excessive. From the award of the Tribunal, it is seen that the Tribunal has awarded just and proper compensation and the same does not warrant any interference by this Court.

11. In the result, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.7,18,500/- along with interest and costs is confirmed. The appellant-Insurance Company as well as the 7th respondent are jointly and severally directed to deposit the award amount along with interests 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.328 of 2009. The respondents 1, 3 to 5/claimants 1, 3 to 5 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd and 6th respondents/2nd and 6th claimants are directed to be deposited in any one of the Nationalized Banks till the minor attains majority. The mother of the minor 2nd and 6th respondents is permitted to withdraw the



accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

gsa

To

The Principal District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

Copy To : The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.R.Rathanthara, Advocate SR.No.42749

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.41336

C.M.A.No.1715 of 2015

RK(CO)
GMY(13/09/2019)