



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2015 of 2015 and
M.P.No.1 of 2015 and
C.M.P.No.11085 of 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
TVS Co-operative Building,
37, Krishna Rao Tank Street,
Madurai - 625 001, Madurai District.

.. Appellan/2nd Respondent

Vs.

1.Palanichamy
2.Chinthamani
3.Sathishkumar

..1 to 3 Respondents/Petitioners

4.Subramani

..4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2015 made in M.C.O.P.No.816 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram.

For Appellant : Mr.M.Krishnamoorthy
For RR1 to 3 : Mr.R.Asokan
For R4 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.03.2015 made in M.C.O.P.No.816 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram.

2.The appellant is the second respondent in M.C.O.P.No.816 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Ananthan @ Murugananthan, who died in the accident that took place on 30.08.2010.



3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the fourth respondent and directed the appellant-Insurance Company to pay a sum of Rs.7,96,000/- as compensation to the respondents 1 to 3.

4.Challenging the said award dated 05.03.2015 made in M.C.O.P.No.816 of 2011, the appellant has come out with the present appeal questioning the liability fastened on the appellant.

5.Though the appellant has raised grounds with regard to quantum of compensation, at the time of arguments, the learned counsel for the appellant restricted his arguments with regard to liability alone.

6.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought to have exonerated the appellant-Insurance Company as the deceased traveled in the goods vehicle as unauthorized passenger. The Tribunal erred in holding that the deceased traveled in the lorry as loadman to unload the red sand, whereas the claimants have stated in the claim petition that the deceased was an agriculturist-cum-driver of JCB. The Tribunal failed to consider the admission by P.W.1, the father of the deceased in the cross examination that the deceased has no work in the lorry and he might have traveled in the lorry to a tea stall. The Tribunal erred in not accepting the evidence of R.W.1, the official from appellant-Insurance Company who had stated that the deceased was an unauthorized passenger and there was no coverage for the unauthorized passengers in the policy. The Tribunal erred in not properly considering Ex.R1/copy of Insurance policy, simply carried away by the fact that it was a package policy and prayed for exonerating the appellant-Insurance Company from its liability.

7.Per contra, Mr.R.Asokan, learned counsel appearing for the respondents 1 to 3 contended that the deceased loaded the red sand in the lorry using the JCB and traveled in the lorry to unload the red sand. The deceased was not an unauthorized passenger but he traveled as a load man. The statement in cross examination by P.W.1 with regard to the capacity in which the deceased traveled in the lorry is only on assumption and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused entire materials on record.



9. From the materials available on record, it is seen that the respondents 1 to 3 contended that the deceased was an agriculturist and owner cum driver of JCB. They further contended that on the date of accident, the deceased loaded red sand by using JCB and traveled in the lorry to unload the red sand at the place of owner of Bricklin. The appellant contended that the deceased traveled in the lorry as unauthorized passenger but appellant has not disputed that the deceased loaded red sand by using JCB and after loading the red sand he was travelling in the lorry. The Tribunal considering the above materials held that the deceased traveled in the lorry to unload the red sand which was loaded by the deceased through his JCB and rejected the contention of the appellant that the deceased traveled in the lorry as unauthorized passenger and directed the appellant-Insurance Company, being the insurer of the lorry to pay a sum of Rs.7,96,000/- as compensation to the respondents 1 to 3/ claimants. The Tribunal rightly rejected the evidence of P.W.1 on the ground that he is not an eye-witness. There is no error in the above finding of the Tribunal, warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant-Insurance Company is directed to deposit the amount awarded by the Tribunal as compensation to the respondents 1 to 3, along with 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. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
Dharapuram.



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

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+1 CC to Mr.M.Krishnamoorthy, Advocate sr 35444.
+1 CC to Mr.R.Asokan, Advocate sr 35635.

C.M.A.No.2015 of 2015 and
M.P.No.1 of 2015 and
C.M.P.No.11085 of 2016

CA (CO)
SP (23/09/2019)