

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2171 of 2012

and

M.P.No.1 of 2012

M/s.Oriental Insurance Company Limited,
Branch Office, Siva Complex 2nd Floor,
22C, Sarada College Main Road,
Salem - 636 016 .. Appellant/2nd Respondent

Vs.

1.Tmt.Pappathy
2.Thiru.Thangavel @ Kumar
3.Thiru.Perumal
4.Miss.Alamelu
5.Tmt.Kandayee .. Respondents 1 to 5/Petitioner 1 to 5
6.Thiru.M.Selvam .. 6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.02.2012 made in M.C.O.P.No.49 of 2009 on the file of the learned Motor Accident Claims Tribunal (subordinate Judge) of Mettur at Salem.

For Appellant : Mr.J.Chandran

For R1 to R5 : Mr.Varadha Kamaraj
for Mr.T.S.Vijaya Raghavan

For R6 : No appearance

JUDGMENT

The 2nd respondent before the Tribunal, is the appellant herein. This Civil Miscellaneous Appeal has been filed against the order and Decree dated 10.02.2012 made in M.C.O.P.No.49 of 2009 on the file of the learned Motor Accident Claims Tribunal (subordinate Judge) of Mettur at Salem.

2. The averments made in the claim petition in brief are as follows:-

i) The deceased Krishnan is the husband of the 1st claimant. The second to fourth claimants are the deceased Krishnan's sons and daughter. The 5th claimant is the deceased Krishnan's mother. On 02.04.2009 at about 9.00 a.m., the deceased went for cutting coconuts along with 2 others in a mini lorry bearing Registration No. TN 65 B 9862 to one Venkatachalam's farm, situated near Sankari Cement Factory.

ii) After completion of their work, when they were returning home in the mini lorry at about 11.00 p.m., the mini lorry stopped near Keeriyur diversion road. When Krishnan getting down from the mini lorry before the deceased got down from the mini lorry, the driver of the mini lorry suddenly took the vehicle and drove the same in a rash and negligent manner. As a result, Krishnan who was getting down from the vehicle, lost his control, fell down from the mini lorry and the back wheel of the vehicle ran over his abdomen and caused the accident.

3. On consideration of both oral and documentary evidence adduced before the Tribunal, the Trial Court has relied upon Exhibit A1-F.I.R, Exhibit A5-Driving Licence, Exhibit A6-charge sheet filed by the police before the learned Judicial Magistrate No.I and also Exhibit A7 - copy of the Motor Vehicle Inspection Report, coupled with the evidence of R.W.2 driver of the tempo along with P.W.2 occurrence witness and has held that the accident has taken place due to the negligence of the driver of the tempo lorry and the said finding is hereby confirmed.

4. The appellant/Insurance Company has preferred this appeal on the quantum of liability alleging that the deceased is a coconut cutter as per the averment in the claim petition and also as per the oral evidence of P.W.1 in the witness box and as such, he is an unauthorized passenger and hence, the Insurance Company cannot be mulcted with the liability.

5. On a perusal of Exhibit B1 Insurance Policy and Exhibit B2 R.C.Book of the offending vehicle and the seating capacity is for two persons other than the driver and in the said accident only one person has injured and he has also died and also the fact that one passenger died in the accident and there is also coverage for two persons who had travelled in the van and also the evidence of R.W.2-driver, this Court holds that the pay and recovery as ordered by the Tribunal need not be interfered with and the same is hereby confirmed and the quantum awarded by the Tribunal cannot be termed as excessive and hence, the same is also hereby confirmed.

6. In view of this matter, this Civil Miscellaneous Appeal is dismissed. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimants to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

nvi

To

The Motor Accident Claims Tribunal
(subordinate Judge) of Mettur at Salem.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.22755

+1cc to Mr.T.S.Vijaya Raghavan, Advocate SR.No.22455

C.M.A.No.2171 of 2012 and
M.P.No.1 of 2012

MP (CO)
GMY (03/07/2019)

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