

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.336 and 339 of 2018

1.Vasantha

2.Babu ...Appellants in C.M.A.No.336 of 2018/Claimants

Jayalakshmi ...Appellant in C.M.A.No.339 of 2018/Claimants

Vs

1.Venkatesalu

2.ICICI Lombard General

Insurance Company Limited,
No.140, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

...Respondents in both C.M.A's

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 04.12.2013 made in M.C.O.P.Nos.4863 and 4864 of 2009, on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Chennai.

(In Both C.M.A's)

For Appellants : Mrs.Ramya V Rao

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 04.12.2013 made in M.C.O.P.Nos.4863 and 4864 of 2009, on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Chennai.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants are claimants in M.C.O.P.Nos.4863 and 4864 of 2009, on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Chennai. The claimants in M.C.O.P.No.4863 of 2009 filed the claim petition claiming a sum of Rs.5,00,000/- as

compensation for the death of one Nagaraj, who died in the accident that took place on 04.10.2008. The claimant in M.C.O.P.No.4864 of 2009 filed the claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.10.2008. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tempo belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.1,60,000/- as compensation to the appellants in C.M.A.No.336 of 2018 and Rs.20,000/- as compensation to the appellant in C.M.A.No.339 of 2018 and dismissed the claim petitions as against 2nd respondent. Challenging the said award dated 04.12.2013 made in M.C.O.P.Nos.4863 and 4864 of 2009 the appellants/Claimants have come out with the present appeals.

4.The learned counsel appearing for the appellants contended that the Tribunal erred in relying on contents of F.I.R lodged by 3rd party stating that while the deceased and appellant in C.M.A.339 of 2018 were waiting for bus in the bus stop, at that time, the 1st respondent's auto crossed and they got into the auto and travelled in the auto. The Tribunal failed to see that nowhere in the evidence and pleadings it has been stated that deceased and injured claimant travelled as gratuitous passengers. The Tribunal failed to see that owner of the goods or representatives of goods can travel in the goods vehicle and in the present case only 2 claims were made, one for fatal and another for injury and prayed for setting aside the award of the Tribunal dismissing the claim petitions against the 2nd respondent and directing the 1st respondent/owner of the vehicle to pay compensation.

5.Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent/Insurance Company contended that the claimants have not pleaded in the claim petitions that deceased and injured claimant travelled in the auto along with their goods as authorised representatives or the owner of the goods. The 2nd respondent in the counter statement stated that the deceased and appellant in C.M.A.No.339 of 2018 are only gratuitous passengers and appellants failed to let in any evidence to disprove the same. The 2nd respondent has examined R.W.1 to prove that offending vehicle is a goods vehicle and Insurance Policy does not cover gratuitous passenger and the 2nd respondent is not liable to pay any compensation. The Tribunal has rightly dismissed the claim petition against the 2nd respondent and prayed for dismissal of the appeals.

6.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the

materials available on record.

7.From the materials on record, it is seen that appellants have stated in the claim petitions that deceased and appellant in C.M.A.No.339 of 2018 have travelled in tempo auto. They have not stated that they travelled along with their goods as authorised representatives or the owner of the goods. It is also seen that 2nd respondent in the counter statement contended that the deceased and appellant in C.M.A.No.339 of 2018 are gratuitous passengers in the goods vehicle and 2nd respondent/Insurance Company is not liable to pay any compensation. The 2nd respondent examined R.W.1 and marked Exs.R1 to R3 to prove that offending vehicle was a goods vehicle and policy issued by the 2nd respondent did not cover passengers travelling in the goods vehicle. Further, in the F.I.R it has been stated that while the deceased and appellant in C.M.A.No.339 of 2018 were waiting in the bus stop, at that time, the tempo auto crossed and they got in to the auto and travelled in the auto. The contents of F.I.R is also not a conclusive proof of negligence or conclusive proof against the claims made in the claim petitions. On the other hand, it can be considered along with pleadings and evidence to decide issue before the Tribunal. The Tribunal considering the pleadings, oral and documentary evidence and contents of F.I.R extracted in the award against the deceased and appellant in C.M.A.No.339 of 2018, held that they travelled only as gratuitous passenger in the goods vehicle. The Tribunal has given cogent and valid reason for the said contention.

8.In the result, both the Civil Miscellaneous Appeals are dismissed and award of the Tribunal is confirmed. The 1st respondent is directed to deposit entire amount awarded by the Tribunal along with interest and cost, less the amount, already deposited if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit the appellants are permitted to withdraw the entire amount awarded by the Tribunal along with interest and cost on the basis of apportionment fixed by the Tribunal, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

rst/gbi

To

The Special Subordinate Court No.1,
The Motor Accidents Claims Tribunal,
Chennai.

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.23663, 23664

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.24842

C.M.A.Nos.336 and 339 of 2018

tm(CO)

GMV(03/10/2019)



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