

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2327 of 2010

The Manager,
Motor Thirty Party Cell,
The New India Assurance Co., Ltd.,
No.45, Moore Street, Parrys Chennai
Branch off: New India Assurance Co., Ltd.,
Katcherry Road, Mylapore, Chennai. ... Appellant

Vs

1. Rani
2. Kannamma
3. Loganathan @ Palani (Minor)
4. Partheeban (Minor)
5. Venkatesan (Minor)
6. Latha (Minor)
7. Mani (Minor)
8. Dhanalakshmi (Minor)
9.R.Anburaj (Minor) ... Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the Judgment and Decree dated 22.03.2010 made in M.C.O.P.No.5788 of 2005 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr. S.Jayasankar
For Respondents : Mr.T.Veerasamy for R1 and R2
R3 to R8 rep by R1
Mr.S.Periyasamy for R9

J U D G M E N T

The Appellant herein, viz., New India Assurance Company Limited preferred this Appeal against the award passed by the Motor Accident Claims Tribunal (II Court of Small Causes) in M.C.O.P.No.5788 of 2005 dated 22.03.2010 raising various grounds.

2. The Tribunal had awarded a total compensation of Rs.7,98,000/- with 7.5% interest per annum from the date of filing the petition, viz., 30.12.2005 till date of deposit within two months.

3. The case of the claimants is that on 27.10.2005 around 20.00 hrs, the deceased, viz, Ravi was returning home after performing his job as Pandaram in Nugambakkam Cremation ground along with his cousin by travelling in mini door auto bearing registration no.TN 09 AA 1157 at sterling road junction near Loyala college, the driver of the said mini door

auto had driven the auto rashly and negligently and it was raining night and skidded after running over the road side sand heap and fell down from the auto and sustained injuries and later died. Since the 1st respondent is the owner of the vehicle, the 2nd respondent is the insurer of the vehicle, and there was a insurance policy, both were jointly liable to pay the compensation, therefore, the claimants have claimed compensation against both the respondents.

4. The appellant filed the detailed counter denying all the averments made by the claimants, who were the legal heirs of the deceased before the Tribunal and had stated that the Mini Door Auto TN 09 AA 1157 is the goods vehicle in which only owner of the goods can travel and only if that person sustained injuries they are liable to pay compensation. The deceased, who travelled in the goods vehicle, as a passenger and sustained fatal injury, which is in violation of the policy condition and the appellant / insurance company is not liable to pay any compensation.

5. Apart from that, the appellant / Insurance Company also submitted that the income and earning of the deceased as Rs.7,000/- is disputed. The counsel for the appellant / insurance company submitted

that the Tribunal ought not to have accepted the plea of the claimants and the claim ought not to have been allowed as the Insurance company is not liable to pay any compensation because the owner of the vehicle has violated the policy conditions. As the minidoor auto is not a passenger vehicle and no person can be permitted to be carried as a passenger in such vehicle.

6. Before the Tribunal, the claimants have marked exhibits Ex.P.1 to P.8 and two witnesses, viz., P.W.1 and P.W.2 were examined. On the side of the respondents, Exs.R1 and R.2 were marked and one person, viz., R.W.1 was examined as a witness. On perusing the records, the accident occurred was not disputed as the either party before the Tribunal as well as this Court has admitted the manner in which the accident has occurred and the only point to be considered is whether the mini door auto bearing registration no.TN 09 AA 1157 which is insured with the appellant / Insurance Company is liable to pay any compensation and whether the award of the Tribunal is right.

7. From the perusal of the records it is seen that P.W.2, one Thiru Selvam, who is an eye-witness for the said accident has deposed in favour

of the deceased. Neither before this Court nor before the Tribunal, the appellant has pleaded that the vehicle has carried the passenger contrary to the statutory provision. Further, the appellant, has not pleaded in the counter as to what was the seating capacity of the vehicle and in fact, the appellant / insurance company has not adduced any proper evidence either by cross examination of witnesses or from their own side to prove that it was only a carriage vehicle and not a passenger vehicle.

8. Moreover, P.W.2 had travelled along with the deceased and the driver and the driver of the vehicle bearing TN09 AA1157 had categorically did not lead evidence neither documentary evidence to prove the mini door auto was a carriage vehicle and even otherwise, the minidoor auto was having a seating capacity of two persons in the driver seat, wherein the deceased was seated as an unauthorised passenger, the insurance company cannot wash away their hands from paying the award amount, when the seating capacity of the mini door auto, which alleged to have been involved in the accident has got driver plus additional seat approved, the accident of the deceased, who travelled in a seat meant for passenger along with the driver is entitled for the compensation.

9. If at all any evidence against the claimants that ought to have been produced by the appellant / company, they would have been produced the same before the Tribunal. The mere statement will not be sufficient and the appellant had neither proved before the Tribunal nor before this Court by any evidence / document that the vehicle involved was only a goods vehicle. The said deceased was working as a pandaram in a cremation ground, he was performing his job at Nungambakkam Cremation ground along with his cousin and only due to the negligent driving of the said auto driver, the said vehicle was capsized and he had sustained injury and later died. When the same was not disputed by the insurance company, the Tribunal has rightly come to the conclusion that the deceased was aged around 38 years and multiplier 16 was applied and the court below has rightly fixed Rs.4,000/- as his monthly salary and the amount of Rs.7,68,000/- was awarded towards the pecuniary loss of the deceased and awarded Rs.10,000/- towards loss of estate, Rs.10,000/- towards Consortium for 2nd appellant/-. Further, Rs.5,000/- was awarded to the children for loss of love and affection and Rs.10,000/- towards funeral expenses. In total a sum of Rs.7,98,000 was awarded and hence this Court is of the view that the award passed by the Tribunal has to be

sustained. As per the policy condition, the seating capacity is two and accordingly, a person, who performs his job as Pandaram, has travelled along with this decorative materials. The appellant being insurer of the vehicle and the 9th respondent, being owner of the vehicle are jointly and severally liable to compensate the claimants.

Accordingly, the award passed by the Tribunal in M.C.O.P.No.5788 of 2005 dated 22.03.2010 is confirmed and the present Civil Miscellaneous Appeal is dismissed. No costs.

02.06.2020

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment

ssd

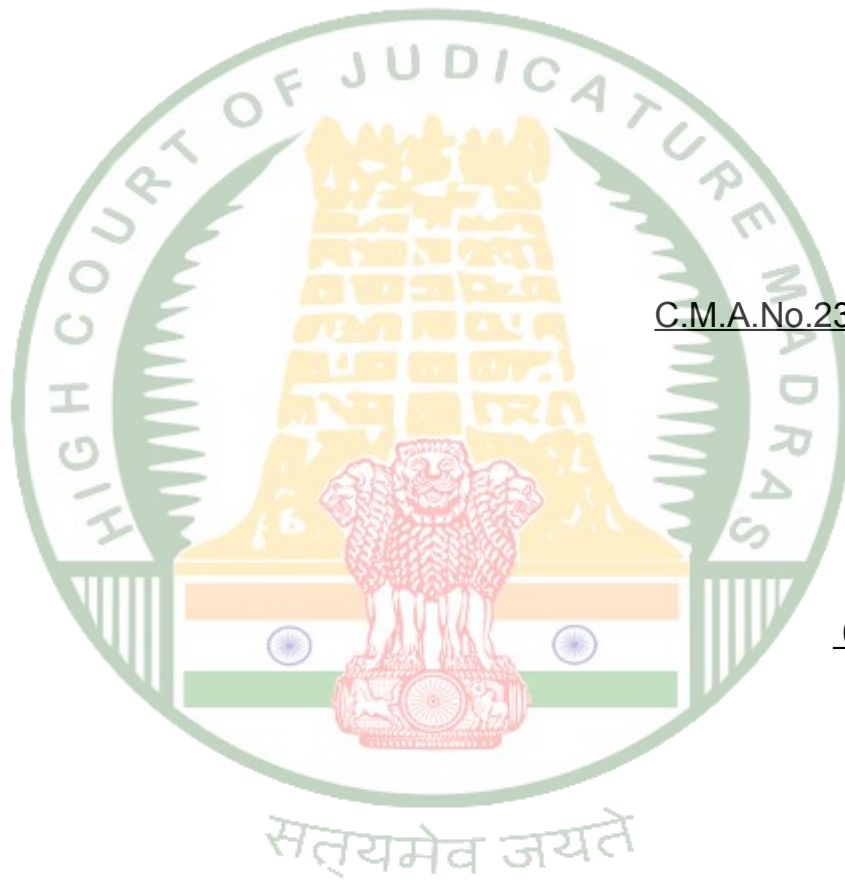
To

1.The Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai.

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

V.BHAVANI SUBBAROYAN, J.,

ssd



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