

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3165 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Officers Line, Vellore. ... Appellant/Respondent 2

Vs.

1. Baby
2. Sampath
3. P.Babu
... Petitioners and Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment in M.C.O.P.No.289 of 2005, dated 19.10.2009, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Vellore.

For Appellant : Mr.R.Sivakumar
For Respondents:
For R1 & R2 : Mr.N.S.Sivakumar
For R3 : Given up

JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 19.10.2009 passed by the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore in M.C.O.P.No.289 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,93,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition (11.04.2005) till the date of deposit (19.10.2009), to the first respondent/claimant.

3. By the impugned order, the Tribunal has ordered pay and recovery of the award amount from the third respondent/owner of

the vehicle. The operative portion of the impugned order reads as under:-

"In this case on hand, admittedly, the passengers travelled in goods carriage auto and the insurance was not covered to them, as could be seen from Ex.R.2, the Insurance Policy copy. Therefore the Insurance Company is entitled to recover the amount from the owner of the vehicle. Since the deceased is a third party, the Insurance Company is to satisfy the award in favour of claimant and thereafter recover the same from the owner of the vehicle as laid down in the above ruling."

and squarely the Tribunal ordered as follows:-

"In the result, petition is allowed in part and accordingly the respondents are jointly and severally liable to pay compensation of Rs.2,93,000/- to the petitioners, out of which the apportionment is that both the petitioners are equally entitled to a sum of Rs.1,46,500/-, along with interest at the rate of 7.5% pa., from the date of petition with costs; At first instance 2nd respondent shall deposit the compensation amount into court within 30 days hereof and thereafter recover the same from the first respondent; Petitioners are permitted to withdraw half of their respective compensation awards along with entire interest accrued thereupon at once and remaining half of their compensation awards are ordered to be deposited in any one of the nationalised bank for a period two years. The petitioners are directed to deposit the deficit court fee into court within 15 days hereof."

4. The learned counsel for the appellant/Insurance Company submits that in the light of the admitted facts that the offending vehicle was a goods carriage vehicle and since the deceased travelled as a gratuitous passenger in the said vehicle, the respondents/claimants were not entitled to compensation from the appellant/Insurance Company and therefore there is no question of ordering to pay and recover the amount. In connection with a reference was drawn to the recent decision of the Hon'ble Division Bench of this Court in the case of Bharati Axa General Insurance Company Limited Vs Aandi and others, 2018 (2) TANMAC 731 (DB), in C.M.A.Nos.1529 to 1533 of 2015, wherein it has been held as follows:-

.....

5. Learned Counsel for the respondents/claimants defends the impugned Judgment and Decree passed by the Tribunal and prays for dismissal of the appeal.

6. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing on behalf of the 1st and 2nd respondents. I have also perused the evidence available on record.

7. The issue is now squarely covered by the above decision of the Hon'ble Division Bench of this Court. As such, the appellant/Insurance Company cannot be held liable to pay compensation in the case of a gratuitous passenger of a goods carriage vehicle. At the same time, as submitted by the learned counsel for the claimants (R1 & R2) that the Tribunal erred in awarding a restricted compensation of Rs.2,93,000/- by applying the multiplier of 16 instead of 18 as the deceased was aged about 20 years at the time of accident. Since, this aspect is not in dispute, the compensation payable to the respondents/claimants is recomputed by applying the multiplier of 18 and accordingly the amount awarded towards loss of income to the family due to the demise of the deceased would be Rs.18,000/- x 18 = Rs.3,24,000/-.

8. Therefore, there shall be a partial increase in the compensation from Rs.2,93,000/- to Rs.3,24,000/-, in view of the increase in the compensation awarded on account of loss of income to the family. Therefore, while allowing the appeal filed by the appellant/Insurance Company, the compensation payable to the claimants (R1 & R2) stands partly enhanced to Rs.3,24,000/- together with interest at 7.5% from the date of claim petition till the date of deposit to the first respondent/claimant.

9. The first respondent/claimant is therefore entitled to proceed against the third respondent/owner of the insured vehicle in the manner known to law to claim the compensation.

10. This Civil Miscellaneous Appeal stands partly allowed with the above observation. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arb

To:

The Motor Accidents Claims Tribunal,
Principal District Court, Vellore.

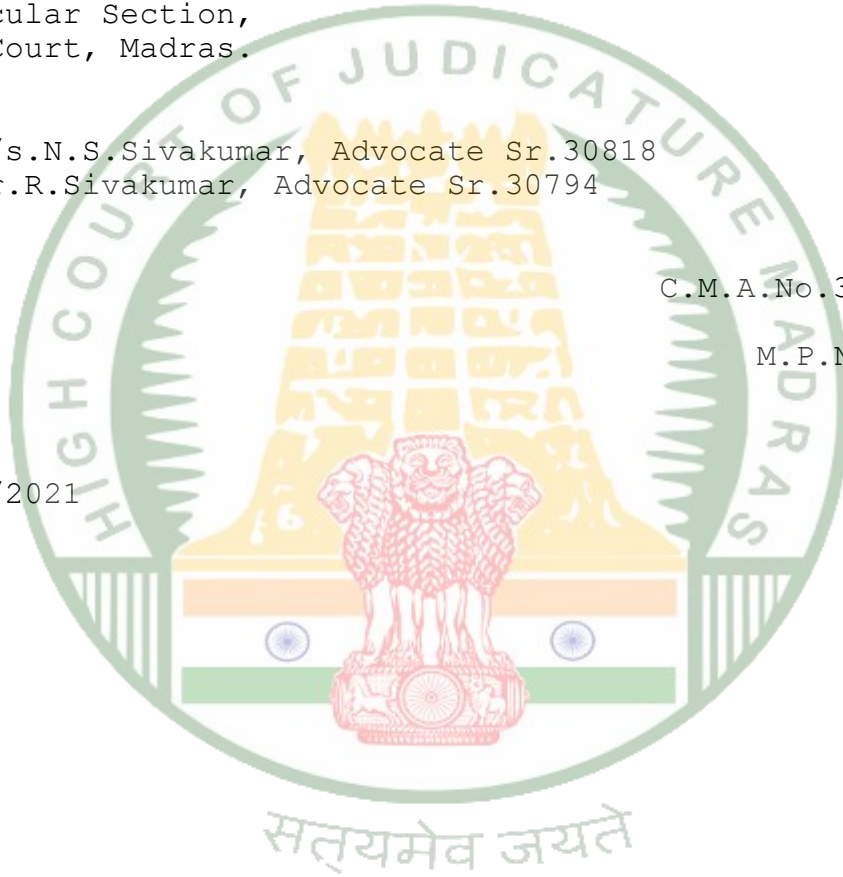
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+1cc to M/s.N.S.Sivakumar, Advocate Sr.30818
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