

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1559 of 2013
and
M.P.No.1 of 2013

The New India Assurance Company Limited,
East Coast Chambers, I Floor,
92, G.N.Chetty Road, Chennai - 600 017.
And having Regional Office at
Obli Towers, Near Savitha Hall,
R.S.Puram,
Coimbatore. ... Appellant /Respondent 3

Vs.

1.Sornalakshmi

2.Minor.Hareeswaran

(Minor 2nd respondent represented by his mother
and next friend Sornalakshmi, 1st respondent
herein)

3.K.Ravikumar

4.R.Saradha

5.A.Nagendran

6.R.Chellammal

... Respondents/
Petitioners 1 to 4 and RR1,2

(R5 & R6 remained exparte before the Tribunal.
Hence, notice to R5 & R6 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.08.2007 made in M.C.O.P.No.397 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Special Court for E.C. Act cases, Coimbatore.

For Appellant : Mr.J.Chandran

For RR 1 to 4 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

RR 5 &6 - not ready notice

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 13.08.2007 made in M.C.O.P.No.397 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Special Court for E.C. Act cases, Coimbatore.

3.The appellant is the 3rd respondent in M.C.O.P.No.397 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Special Court for E.C. Act cases, Coimbatore. The respondents 1 to 4 filed the said claim petition under Section 163(A) of the Motor Vehicles Act, 1988, claiming a sum of Rs.4,86,500/- as compensation for the death of one R.Sasikumar, who died in the accident that took place on 30.01.2005.

4.According to respondents 1 to 4, on 30.01.2005 at about 05.30 P.M., while the deceased was travelling in the Minidor Van bearing Registration No.TN 30 T 0081 belonging to the 6th respondent on Pannimadai - Ponnuthu Road, near Sengaliappan Cholakadu bent, the driver of the Minidor van, the 5th respondent herein, drove the van in a rash and negligent manner and turned the van without any control and due to the same, the Minidor van turtled and thus the accident occurred. In the accident, the said R.Sasikumar sustained head injury. Immediately after the accident, the said R.Sasikumar was taken to the Coimbatore Medical College Hospital, Coimbatore and the Doctors examined him and declared him as dead. Therefore, the respondents 1 to 4 filed the said claim petition claiming a sum of Rs.4,86,500/- as compensation against the respondents 5, 6 and appellant-Insurance Company, being the driver, owner and insurer of the Minidor van respectively.

5.The respondents 5 and 6 being the driver and owner of the Minidor van remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the Minidor van filed counter statement and denied all the averments made by the respondents 1 to 4. According to the appellant-Insurance Company, the deceased and others travelled in the 6th

respondent's Minidor van as unauthorized passengers. The Minidor van is meant only for carrying goods but the deceased travelled only as unauthorized passenger and hence, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 to 4. The respondents 1 to 4 have to prove that the deceased died only due to the injuries sustained by him in the accident. The respondents 1 to 4 also have to prove the manner of accident, age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 4 are highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1 and 6 documents were marked as Exs.P1 to P6. The appellant-Insurance Company examined one Venkatachalam who is an Assistant from the appellant-Insurance Company as R.W.1 and 2 documents were marked as Exs.R1 and R2.

8. The Tribunal, considering the pleadings, oral and documentary evidence, directed the appellant-Insurance Company to pay a sum of Rs.3,90,500/- as compensation to the respondents 1 to 4 at the first instance and recover the same from the respondents 5 and 6, who are the driver and owner of the Minidor van respectively.

9. Against the said award dated 13.08.2007 made in M.C.O.P.No.397 of 2006, the appellant-Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in directing the appellant-Insurance Company to pay the compensation after holding that deceased traveled in the goods vehicle as unauthorized passenger and recover the same from the respondents 5 and 6, driver and owner of the goods vehicle respectively. The Tribunal failed to see that when Insurance Company is not liable to pay compensation as per the provisions of Motor Vehicles Act or as per the terms and conditions of policy, the Insurance Company cannot be directed to pay the compensation at the first instance and recover the same from the driver and owner of the vehicle. The Tribunal erred in holding that in the claim petition filed under Section 163 (A) of the Motor Vehicles Act, the Insurance Company is liable to pay compensation to the gratuitous passenger. The Tribunal failed to see that claim petition filed under Section 163(A) is not maintainable as the income of the deceased was more than Rs.40,000/- per annum as according to the respondents 1 to 4, the deceased was working as Building Coolie and was earning a sum of Rs.175/- per day. The learned counsel appearing for the appellant made various averments with regard to quantum of compensation and in support

of his contention the relied on the judgment of this Court reported in 2020 (1) TNMAC 542, [Branch Manager, Oriental Insurance Company Limited, Dharmapuri Vs. Kamatchi and others] and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988 and as per the judgment of the Hon'ble Apex Court and this Court, the appellant is not entitled to raise the plea of negligence and gratuitous passenger. The Tribunal considering the materials on record and judgment relied on by the learned counsel appearing for the appellant, ordered pay and recovery. There is no error in the award of the Tribunal warranting interference by this Court and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

13.From the materials on record, it is seen that the deceased traveled in the goods vehicle for picnic along with his friends and while returning, the accident has occurred and the deceased died due to the injuries sustained in the accident. The Tribunal considering Ex.P1/F.I.R., wherein it has been stated that deceased and others traveled in the goods vehicle for picnic and while returning, the accident has occurred, held that in a goods vehicle no one can travel as a passenger. After holding so, the Tribunal erroneously held that as per the judgment of the Hon'ble Apex Court, the Insurance Company is liable to pay the compensation even to a gratuitous passenger, when a claim petition is filed under Section 163(A) of the Act, the claimant need not plead and prove the negligence on the part of the owner and driver of the vehicle and Insurance Company is not entitled to raise plea of negligence on the part of the claimant. In number of cases, the Hon'ble Apex Court and this Court held that Insurance Company is not liable to pay the compensation to the gratuitous passengers. When the Insurance Company is not liable to pay the compensation to the gratuitous passengers, the Courts cannot direct the Insurance Company to pay the compensation to the claimants at the first instance and recover the same from the owner of the vehicle. In view of the well settled law, the portion of the award of the Tribunal ordering pay and recovery is liable to be set aside and it is hereby set aside.

14.The respondents 1 to 4 are entitled to get compensation only from the 6th respondent-owner of the vehicle. It is made clear that if any amount is deposited by the appellant-Insurance

Company and the same was withdrawn by the respondents 1 to 4, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 to 4, but the appellant-Insurance Company is entitled to recover the said amount only from the 6th respondent, who is the owner of the Minidor van.

15. With the above modification, this Civil Miscellaneous Appeal is allowed and sum of Rs.3,90,500/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The 6th respondent-owner of the Minidor van is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.397 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Special Court for E.C. Act cases, Coimbatore. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. The appellant/Insurance Company is permitted to withdraw the amount, if any deposited to the credit of MCOP No.397 of 2006 before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Special Court for E.C. Act cases,
Coimbatore.

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

+1 cc to M/s.J.Chandran, Advocate Sr.No. 36919
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 36660

C.M.A.No.1559 of 2013

EV (CO)
RMP (07/05/2021)



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