

3.The appellant is the 2nd respondent in M.C.O.P.No.501 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri. The respondents 1 to 6 filed the said claim petition under Section 163(A) of the Motor Vehicles Act, 1988, claiming a sum of Rs.5,00,000/- as compensation for the death of one Munirathinamma, who died in the accident that took place on 10.06.1998.

4.According to respondents 1 to 6, on 10.06.1998 at about 09.30 A.M., while the deceased was proceeding in a Tractor bearing Registration No.AP 03 U 1652 and Tractor bearing Registration No.AP 03 U 1653 on Gudupalli - Kuppam road near Gutharlapalli, the driver of the Tractor drove the same in a rash and negligent manner, due to which, the link rod got broken and tractor toppled down. In the impact, the said Munirathinamma sustained multiple grievous injuries all over her body and died. Therefore, the respondents 1 to 6 filed the said claim petition against the 7th respondent and appellant-Insurance Company, being the owner and insurer of the Tractor respectively.

5.The 7th respondent-owner of the Tractor remained exparte before the Tribunal.

6.The appellant-Insurance Company, insurer of the Tractor filed counter statement and denied all the averments made by the respondents 1 to 6. According to the appellant, the driver of the Tractor was not possessing driving license. As per Section 2 (43) of the Motor Vehicles Act, the 7th respondent's tractor is a goods carriage and at the time of accident, more than 15 persons traveled in the goods carriage as unauthorized passengers. Hence, the appellant is not liable to pay any compensation. The appellant denied the manner of accident. The respondents 1 to 6 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 6 are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 2nd respondent examined himself as P.W.1 and the 1st respondent examined himself as P.W.2 and 6 documents were marked as Exs.P1 to P6. The appellant-Insurance Company examined one J.Panneerselvam as R.W.1 and marked 3 documents as Exs.R1 to R3.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the said Munirathinamma died due to the injuries sustained by her in the accident involving 7th respondent's tractor and directed the appellant-Insurance Company to pay a sum of Rs.3,23,000/- as compensation to the respondents 1 to 6 at the first instance and recover the same from the 7th respondent, owner of the Tractor.

9. Against the said award dated 23.01.2012 made in M.C.O.P.No.501 of 2008, 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 ought to have exonerated the appellant completely instead of ordering pay and recovery. The owner of the Tractor committed breach of policy condition by carrying more than 20 persons to travel in the goods vehicle as unauthorized passengers and prayed for setting aside the award of the Tribunal.

11. Though the respondents 1 to 6 entered appearance through counsel, there was no representation on 18.11.2020. To give one more opportunity, it was posted today. Today also there is no representation on behalf of respondents 1 to 6.

12. Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the contention of the respondents 1 to 6 that the deceased traveled in the 7th respondent's tractor as load woman and accident occurred due to rash and negligent driving by the driver of the tractor trailer. To substantiate the same, the 2nd respondent examined himself as P.W.1 and 1st respondent examined himself as P.W.2 and marked F.I.R. as Ex.P1. According to the appellant, the deceased along with 19 others traveled in the tractor trailer as unauthorized passenger and therefore, the appellant is not liable to pay the compensation. The appellant relied on F.I.R. marked by respondents 1 to 6 as Ex.P1. From the materials on record, it is seen that the deceased and others were traveling in a lorry to Kuppam in Andhra Pradesh. The lorry in which the deceased and others traveled stopped due to non availability of petrol in the fuel tank of the lorry and hence the deceased and others got into the offending tractor trailer which was proceeding towards Kuppam. The Tribunal considering F.I.R., held that at the time of accident, the deceased and others, totally 20 persons traveled in the tractor trailer as unauthorized passengers. Having held so, the Tribunal did not give any finding whether appellant-Insurance Company is liable to pay the compensation for the death of an unauthorized passenger. On the other hand, the Tribunal without giving any finding with regard to liability of the appellant to pay the compensation to respondents 1 to 6 or not, for the death of an unauthorized passenger, directed the appellant to pay the compensation at the first instance and recover the same from the 7th respondent on the ground that driver of the tractor did not possess driving license. The said finding is erroneous.

14.The award of the Tribunal directing the appellant to pay the compensation for the death of an unauthorized passenger is erroneous as the deceased was an unauthorized passenger and driver of the offending vehicle did not possess driving license at the time of accident. The said erroneous finding is liable to be set aside and it is hereby set aside. The Hon'ble Apex Court in the judgment reported in AIR 2020 SC 4453, [Beli Ram Vs. Rajinder Kumar], held that for not possessing driving license, the Insurance Company is not liable to pay compensation to the victim. Therefore, the 7th respondent-owner of the tractor is liable to pay the compensation to the respondents 1 to 6.

15.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 6, the appellant is not entitled to recover the same. However, the appellant is permitted to recover the amount only from the 7th respondent.

16.With the above modification, this Civil Miscellaneous Appeal is allowed and sum of Rs.3,23,000/- awarded by the Tribunal as compensation to the respondents 1 to 6, along with interest and costs is confirmed. The 7th respondent-owner of the tractor 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.501 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri. On such deposit, the respondents 1 to 6 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 appellant-Insurance Company is permitted to withdraw the amount, if any deposited to the credit of M.C.O.P.No.501 of 2008 before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk
To
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1 cc to Mr.M.Krinamoorthy, Advocate Sr.No. 37740

C.M.A.No.1561 of 2013

VBA (CO)
RMP (11/05/2021)