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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1792 and 1793 of 2013

S.Rajagopal

... Appellant/1st Respondent
in both CMAs.

Vs.

1.Veerasamy
2.Kamala

3.Minor Chithra
(Minor represented by her
next friend and their mother
2nd respondent Kamala)

...Respondents 1 to 3/Claimants 1 to 3

4.The Oriental Insurance Company Ltd.
Katpadi road, Vellore,
North Arcot District. ...4th Respondent/3rd Respondent

5.Govindaraji ...5th Respondent/2nd Respondent
in CMA No.1792 of 2013

1.Vasavi

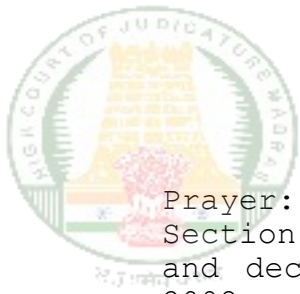
2.Minor P.Pavithra
3.Minor P.Sivasankari
4.Minor P.Sivarasan

...Respondents 1 to 4/Claimants 1 to 4

(Minors represented by their
Guardian and mother, the 1st
respondent, Vasavi)

5.Govindaraji ...5th Respondent/2nd Respondent

6.The Oriental Insurance Company Ltd.
Katpadi road, Vellore, North Arcot District.
... 6th Respondent/3rd Respondent
in C.M.A.No.1793 of 2013



Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2003 made in M.C.O.P.Nos.489 and 499 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court), Tirupattur, Vellore District.

In C.M.A.No.1792 of 2013

For Appellant : Mrs.V.Srimathi
for M/s.V.Raghavachari

For R2 & R3 : No appearance

For R4 : Mr.P.Kandasamy
for Insurance Company

In C.M.A.No.1793 of 2013

For Appellant : Mrs.V.Srimathi
for M/s.V.Raghavachari

For R1 to R4 : Mr.Prabakaran
for Mr.G.Rajan

For R6 : Mr.P.Kandasamy
for Insurance Company

C O M M O N J U D G M E N T

This matter is heard through "Video-Conferencing".

These Civil Miscellaneous Appeals are filed by the owner of the vehicle challenging the portion of the award dismissing the claim petitions as against the Insurance Company dated 25.04.2003 made in M.C.O.P.Nos.489 and 499 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court), Tirupattur, Vellore District.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions.



3.The appellant is the 1st respondent in M.C.O.P.Nos.489 and 499 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court), Tirupattur, Vellore District. The claimants filed the said claim petitions claiming Rs.1,00,000/- and Rs.1,40,000/- respectively as compensation for the death of one Parthiban who died in the accident that took place on 22.01.1996.

4.According to the claimants, on the date of accident i.e., on 22.01.1996 at about 1.00 p.m., while the deceased Parthiban along with four others were travelling as coolies in the tractor belonging to the 1st respondent near Alangaramangalam, the 3rd respondent in M.C.O.P.No.489 of 2002 drove the same in a rash and negligent manner, due to which, the tractor got capsized and the accident has occurred. Due to the accident, the deceased Parthiban sustained fatal injuries and died on the spot. Hence, the claimants filed the above said claim petitions claiming compensation against the respondents in M.C.O.P.No.489 of 2002 being owner, insurer and driver of the tractor respectively.

5.The respondents 1 and 3 in M.C.O.P.No.489 of 2002, owner and driver of the tractor respectively entered appearance through advocate, but have not chosen to file their counter statements. Hence, they were set exparte in M.C.O.P.No.499 of 2002.

6.The 2nd respondent/Insurance Company in M.C.O.P.No.489 of 2002 being insurer of the tractor filed counter statement denying the averments made in the claim petition and stated that the deceased Parthiban was sitting on the mudguard of the tractor at the time of accident. There is no provision for two persons to sit on the tractor and only the driver can sit and drive. The deceased alone had taken risk on his own by sitting on the mudguard of the tractor. There is no negligence on the part of the driver of the tractor. Therefore, the Insurance Company is not liable to pay any compensation to the claimants. Two policies were in force on the date of accident. One policy was issued by the 2nd respondent/Insurance Company in M.C.O.P.No.489 of 2002. The other policy was issued by National Insurance Company, Vellore, who was not made as a party to the claim petitions. Therefore, the claim petitions are bad for non-joinder of necessary party. The Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the father of the deceased, the 1st claimant in M.C.O.P.No.489 of 2002 examined himself as P.W.1 and one M.Perumal, co-traveller was examined as P.W.2 and marked



two documents as Exs.P1 and P2. The respondents did not let in any oral and documentary evidence.

8.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 tractor belonging to the 1st respondent, directed the 1st respondent as well as the driver of the tractor, the 3rd respondent in M.C.O.P.No.489 of 2002 to jointly and severally pay Rs.62,500/- and Rs.1,31,100/- as compensation to the claimants in M.O.P.Nos.489 and 499 of 2002 respectively and dismissed the claim petitions as against the 2nd respondent/Insurance Company in M.C.O.P.No.489 of 2002 as the deceased travelled in the tractor as an un-authorized passenger.

9.Challenging the portion of the award dismissing the claim petitions as against the 2nd respondent/Insurance Company in M.C.O.P.No.489 of 2002, the 1st respondent, owner of the tractor has come out with the present appeals.

10.The learned counsel appearing for the 1st respondent, owner of the tractor contended that the Tribunal committed error in awarding compensation without even hearing the argument of the 1st respondent and perusing the documents placed before the Court. The Tribunal failed to see that the deceased had taken risk on his own by sitting on the mudguard of the tractor as evidenced by F.I.R. P.W.2, a co-traveller of the deceased deposed that the deceased tried to jump over on the right side and the wheels ran over him. The Tribunal erred in holding that the accident has occurred due to rash and negligent driving by the driver of the tractor. The Tribunal failed to see that other coolies who travelled along with the deceased have not sustained any injuries in the accident. The Tribunal erroneously fixed liability on the 1st respondent, owner of the tractor. The Tribunal failed to consider that two claim petitions were filed by the claimants separately for the death of one Parthiban i.e., the respondents 1 to 3 in C.M.A.No.1792 of 2013 (M.C.O.P.No.489 of 2002) and the respondents 1 to 4 in C.M.A.No.1793 of 2013 (M.C.O.P.No.499 of 2002) and prayed for setting aside the award of the Tribunal.

11.Though the 2nd claimant in M.C.O.P.No.489 of 2002 (2nd respondent in C.M.A.No.1792 of 2013) has entered appearance through counsel, there is no representation on behalf of her, when the matter is taken up for hearing.

12.Heard the learned counsel appearing for the 1st respondent as well as the claimants in M.C.O.P.No.499 of 2002



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the deceased travelled on the mudguard of the tractor and therefore, the Insurance Company is not liable to pay compensation to the claimants.

15. The learned counsel appearing for the 1st respondent referred to the grounds of appeals and F.I.R., wherein it has been stated that the deceased travelled at his own risk on the mudguard of the tractor and contended that the 1st respondent is not liable to pay compensation for the negligence of the deceased. The learned counsel appearing for the 1st respondent further contended that without even hearing the arguments of the 1st respondent and perusing the document placed before it, the Tribunal committed error in directing the 1st respondent to pay compensation.

16. From the award of the Tribunal, it is seen that the 1st respondent entered appearance before the Tribunal through the advocate, but has not filed counter statement. There is nothing on record to show that the 1st respondent has let in oral and documentary evidence and the Tribunal failed to consider the documents filed by him and the arguments advanced on behalf of him. It is not in dispute that the seating capacity of the tractor is only one and it is only for the driver. It is admitted by the 1st respondent in the grounds of appeals that the deceased travelled on the mudguard of the tractor. The contention of the 1st respondent that the deceased travelled on the mudguard of the tractor at his own risk and therefore, the 1st respondent is not liable to pay compensation, is without merits. The deceased could not have travelled on the mudguard of the tractor without permission of the driver of the tractor. For the negligence on the part of the driver, the 1st respondent as the owner of the tractor is vicariously liable. For the above reasons, the award of the Tribunal directing the 1st respondent to pay compensation to the claimants is valid. There is no error or perversity in the award of the Tribunal warranting interference by this Court.

17. As far as the contention of the learned counsel appearing for the 1st respondent that two claim petitions were filed separately for the death of the deceased Parthiban is concerned, it is seen from the records that the parents and minor sister of the deceased have filed M.C.O.P.No.489 of 2002 and the wife and minor children of the deceased have filed M.C.O.P.No.499 of 2002. The Tribunal considering both the claim petitions together, by common award, awarded compensation for the death of Parthiban and apportioned the compensation among all the claimants and the same is proper.



18. In the result, both the Civil Miscellaneous Appeals are dismissed and the sum of Rs.62,500/- and Rs.1,31,100/- awarded by the Tribunal as compensation to the claimants in both the claim petitions along with interest and costs are confirmed. In M.C.O.P.No.489 of 2002, out of the award amount of Rs.62,500/-, the claimants 1 and 2 being parents of the deceased are entitled to a sum of Rs.28,000/- each and the 3rd claimant being sister of the deceased is entitled to a sum of Rs.6,500/- as compensation. In M.C.O.P.No.499 of 2002, out of the award amount of Rs.1,31,100/-, the 1st claimant being wife of the deceased is entitled to a sum of Rs.42,000/- and the claimants 2 to 4 being children of the deceased are entitled to a sum of Rs.29,700/- each as compensation. The respondents 1 and 3 in M.C.O.P.No.489 of 2002, owner and driver of the tractor respectively are jointly and severally directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 in M.C.O.P.No.489 of 2002 and the 1st claimant in M.C.O.P.No.499 of 2002 are permitted to withdraw their respective share of the award amount as per the apportionment made by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The share amounts of the minor 3rd claimant in M.C.O.P.No.489 of 2002 and the minor claimants 2 to 4 in M.C.O.P.No.499 of 2002 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 2nd claimant in M.C.O.P.No.489 of 2002 being mother of the 3rd claimant and the 1st claimant in M.C.O.P.No.499 of 2002 being mother of the claimants 2 to 4 are permitted to withdraw the respective interest once in three months for the welfare of the respective minors. Both the appeals are dismissed as against the 2nd respondent/Insurance Company in M.C.O.P.No.489 of 2002. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
(Fast Track Court)
The Motor Accident Claims tribunal,
Tirupattur, Vellore District.



2.The Section Officer,
V.R.Section,
High Court, Chennai.

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+2cc to Mr.V.Raghavachari, Advocate SR.37101 and 37102
+1cc to Mr.R.RajaRajan, Advocate Sr.37123

C.M.A.Nos.1792 and 1793 of 2013

vba[co]
srg 26/08/2021