IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2620 of 2012
and
M.P.No.1 of 2012

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
No.213-217,II floor III Main, 4th Cross,
Chamrajpet, Bangalore-18. ...Appellant/2nd Respondent

Vs.

1.Elumalai
2.Indira Gandhi
3.Neelavathi ..Respondents 1 to 3/Petitioner
4.M.B.R. Shankar ...4th Respondent/1st Respondent

Prayer: This petition has been filed under Section 173 of the Motor Vehicles Act against the Judgment and decree made in M.A.C.T.O.P. No.1234 of 2002 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Krishnagiri dated 15.03.2012.

For Appellant : Mr.M. Krishnamoorthy
For Respondents : No Appearance

JUDGMENT

This petition is filed against the Judgment and decree made in MCOP No.1234 of 2002 on the file of the Motor Accidents Claims Tribunal,District Judge at Krishnagiri dated 15.03.2012.

2.The Respondents 1 to 3 herein are the claimants/legal heirs of the deceased. The appellant and the 4th respondent are the insurer and owner of the alleged vehicle involved in the accident.

3.The facts of the case in brief, are as follows:

On 14.01.2002 at about 16.30 hours, when the deceased (Palani) was travelling in a Mini lorry bearing Registration No.Ka.05.B.7938 with two gunny bags of house hold articles and house hold furniture and when the lorry was nearing Ikuntham

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Junction Road, from Krishnagiri to Thiruvannamalai Main Road, the driver of the lorry turned left side of the road, in order to provide way to another lorry coming in the opposite direction and he lost his control over the vehicle and the lorry was capsized on the left side of the road. The accident occurred due to the rash and negligent driving of the driver and due to the said accident the deceased sustained serious injuries and he was taken to Government Hospital, Krishnagiri at Tirukoilir, but unfortunately he died on the way to hospital. Hence, the legal heirs of the deceased filed a claim petition seeking compensation to the tune of Rs.4,00,000/-. On a consideration of the materials and evidence available on record, the Tribunal awarded Rs.1,82,000/- at 7.5% p.a as compensation from the date of petition.

4. Challenging the award passed by the Tribunal, the appellant/ Insurance Company has come up with this appeal.

5. The learned counsel for the appellant/Insurance Company has submitted that the Tribunal has erred in holding that the Insurance Company is liable to pay compensation to the claimants. He also submitted that eventhough the Tribunal, having given a finding that the deceased travelled in the vehicle as gratuitous passenger and contrarily fixed the liability on the part of Insurance Company, which is not valid in the eye of law.

6. Despite notice being served and names printed in the cause list there is no representation for the respondents. Hence considering the paucity of time the appeal itself is taken up for final disposal, since the disposal of this case will not affect the respondents in any manner.

7. Heard the learned counsel appearing for the appellant/Insurance Company.

8. On a perusal of records it is seen that the deceased was a mason and earning a sum of Rs.4,500/- per month. P.Ws.1,2 and 3 are the daughters of the deceased Palani. P.W.1 deposed that when her father was travelling in the mini lorry, the driver of the said lorry drove the same in the negligent manner and he invited the accident.

9. It was put forth on behalf of the Insurance Company before the Tribunal that the mini lorry is a goods carriage vehicle and as per the insurance policy, the driver or the owner of the lorry has no right to carry passengers in the goods carriage vehicle. As per Section2(14) of the Motor vehicles Act, the vehicle meant for goods carriage should be used only for carrying goods alone.

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10. It is also seen from records that 14 persons including the deceased travelled in the mini lorry from Krishnagiri to Thiruvannamalai Main Road. Allowing such 15 persons to travel in the lorry, is against the terms and conditions of the insurance policy and hence the Insurance Company is not liable to pay any compensation to the claimants.

11. Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it has observed that the claimants should not be affected due to the negligence on the part of the lorry driver and held that as the vehicle was insured with the appellant/Insurance Company they are made liable to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle. But the fact remains that there was violation of policy conditions by the owner of the vehicle.

12. In the Judgment rendered by this Court and reported in 2011(2) TNMAC 774 [MADRAS HIGH COURT] United India Insurance company Ltd. Third Party Claims Vs. M. Thangavel and K.S. Kumar it has been held that if a person travelled as unauthorised passenger, the Insurance company is not liable to pay compensation.

13. The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words "any person" occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. By taking note of the various Judgments of the Hon'ble Supreme Court and this Court and finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation and to recover the same from the owner of the vehicle, is not correct. The Court also observed that even though in many cases, the claimants may not be able to realise the award amount from the owner of the vehicle involved in the accident, the said factual position alone cannot impel the Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

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14. In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the deceased is an unauthorised passenger. But the Tribunal has ordered for pay and recovery, which, according to this Court is not correct, Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants.

15. In the result, the appeal is allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in this appeal, is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, connected miscellaneous petition is closed.

16. If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge
The Motor Accidents Claims Tribunal,
District Court, Krishnagiri.

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

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 4458.

C.M.A.No.2620 of 2012
and
M.P.No.1 of 2012

RSI(CO)
SP(16/12/2020)

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