

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3158 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

The Oriental Insurance Co. Ltd.,
Manjakuppam, Cuddalore-1,
The Divisional Office,
No.179, Eswaran Koil Street,
Pondicherry - 1. ... Appellant/ 2nd Respondent

Vs.

1.Anjalai
2.Pothammal
3.Siva
4.R.Moorthy ... Respondents/ Petitioners 1 to 3
and I Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.44 of 2008, dated 19.09.2011, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tindivanam.

For Appellant : M/s.Harini for
Mr.N.Vijayaraghavan

For Respondents: No appearance

J U D G M E N T

Though this Civil Miscellaneous Appeal pertains to the year 2013, notice on the respondents remains unserved. Since no adverse orders are proposed to be passed against the respondents, this Civil Miscellaneous Appeal is taken up for final hearing and is being disposed by this Judgment.

2. The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 19.09.2011 passed by the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tindivanam in M.C.O.P.No.44 of 2008.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.6,90,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, payable by the appellant Insurance Company to the 1st to 3rd respondents/claimants who are the legal heirs of the deceased Singaram.

4. The brief facts of the case are that the deceased Singaram met with an accident on 10.12.2003 at about 13.00 hours while travelling as a cleaner in a door Van bearing registration No.TN-27-J-8807 belonging to the 4th respondent insured with the appellant Insurance Company. It was driven with a great speed and negligently by its driver. The van thus overturned. In the said accident, the deceased suffered grievous injuries all over his body, as a result of which, he died on the spot.

5. Therefore, the dependents of the deceased (claimants) who are the 1st to 3rd respondents herein filed a claim petition for compensation. The Tribunal has awarded the aforesaid compensation of Rs.6,90,000/- and fixed the liability on the appellant Insurance company. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

6. In this appeal, it is contended that the accident vehicle was not insured with the appellant and therefore, the Tribunal erred in awarding a sum of Rs.6,90,000/- as compensation to the 1st to 3rd respondents/claimants payable by the appellant. It is further submitted that while calculating the aforesaid compensation, the Tribunal erred in awarding a sum of Rs.1,50,000/- towards loss of love and affection.

7. I have considered the arguments advanced by the learned counsel for the appellant. I have also perused the evidence on record and the impugned Judgment and Decree and the grounds of this appeal.

8. It is noticed that the ground on which the case was argued by the learned counsel for the appellant Insurance Company before this Court and the counter filed before the Tribunal are in variance. Before the Tribunal, it was pleaded in the counter that the deceased had travelled in the vehicle as not a cleaner at the time of accident, but he had travelled as a gratuitous passenger. It was contended that the insured vehicle was permitted to carry loads and not passengers. Since the insured vehicle carried the passengers, there was a

violation of policy conditions. Since the appellant Insurance Company has taken different stands in this appeal, which is contrary to the grounds of defence in the counter filed before the Tribunal.

9. Therefore, I find no reasons to interfere with the impugned Judgment and Decree passed by the Tribunal. This Civil Miscellaneous Appeal is liable to be dismissed.

10. If the appellant Insurance Company has not deposited the amount of compensation awarded by the Tribunal, it is directed to deposit the same together with interest as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit, the 1st to 3rd respondents/claimants are permitted to withdraw the same in the same proportion together with interest as directed by the Tribunal, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To:-

The Motor Accidents Claims Tribunal,
The Principal Subordinate Court,
Tindivanam.

C.M.A.No.3158 of 2012
and M.P.No.1 of 2012

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