



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1820 of 2014
and M.P. No.1 of 2014

M/s.National Insurance Co. Ltd.,
Murugan Complex,
K.K. Road,
Villupuram.
II

.. Appellant/Respondent

Vs.

1.Veerammal

2.Thenmozhi

3.Prabu

4.Minor Pushpa
(rep. By mother/guardian, 1st respondent
viz., Veerammal)

..Respondents 1 to 4/Petitioner 1 to 4

5.Kasinathan

6.Srikanth

...Respondents 5&6/Respondents 1 & 3

7.M/s. Oriental Insurance Co. Ltd.,
Regional Office,
U.I.L. Building, IV Floor,
No.8, Esplannade,
Chennai 8.

..7th Respondent/Respondent 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2012, made in M.C.O.P. No.123 of 2008, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram.

For Appellant : Mr. J. Chandran

For Respondents: Mr. M. Sivakumar (For R1 to R4)
for M/s. C. Prabakaran
Mr. P. Kandasamy (For R7)
R5-Not Known
R6-Left



J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 24.01.2012, made in M.C.O.P. No.123 of 2008, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram.

2.The appellant is the 2nd respondent in M.C.O.P. No.123 of 2008, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Patturasu, who died in the accident that took place on 02.07.2004.

3.According to the respondents 1 to 4, on the date of accident the deceased was traveling as Loadman along with three others in a Tractor bearing Registration No.TN-21-XS-5909 attached with Trailer bearing Registration No.TN-31-0866 belonging to the 5th respondent. At Sundharipalayam village, Kumbakonam-Chennai Main Road, the driver of the Tractor drove the same in a rash and negligent manner. At that time, driver of a Lorry bearing Registration No.TN-20-B-2856 belonging to the 6th respondent drove the same negligently and dashed against the Tractor-Trailer in which the deceased traveled and caused the accident. The accident occurred due to negligent driving by both the drivers of the Lorry as well as the Tractor. In the accident, the deceased succumbed to fatal injuries. Hence, the respondents 1 to 4 filed claim petition claiming compensation against the 5th respondent and appellant as owner and insurer of the Tractor as well as the respondents 6 and 7 as owner and insurer of the Lorry involved in the accident.

4.The respondents 5 and 6 remained exparte before the Tribunal.

5.The appellant-Insurance Company, insurer of the Tractor, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the accident occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 6th respondent. The deceased and others traveled in the Tractor as unauthorized passengers. The respondents 1 to 4 have to prove that both the vehicles involved in the accident had valid permit, Registration Certificate and insurance policy at the time of accident and the drivers of both the vehicles possessed valid driving license to ply the vehicles. In any event, the respondents 1 to 4 have to prove the age, avocation and income



of the deceased to claim compensation and prayed for dismissal of the claim petition.

6. The 7th respondent-Insurance Company, insurer of the Lorry, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the 7th respondent, the accident occurred only due to rash and negligent driving by the driver of the Tractor belonging to the 5th respondent. The deceased and others traveled in the Tractor as unauthorized passengers. The respondents 1 to 4 have to prove that at the time of accident, the Lorry had valid permit, Registration Certificate and insurance policy and the driver possessed valid driving license to ply the vehicle. In any event, the respondents 1 to 4 also have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Doctor as P.W.5 and marked 12 documents as Exs.P1 to P12. The appellant examined its official as R.W.1 and marked 4 documents as Exs.R1 to R4. The 7th respondent 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 both the drivers of the Tractor as well as the Lorry and awarded a sum of Rs.3,37,000/- as compensation to the respondents 1 to 4. The Tribunal directed the appellant as insurer of the Tractor to pay a sum of Rs.1,68,500/- being 50% of the award amount to the respondents 1 to 4 at the first instance and recover the same from the 5th respondent and directed the respondents 3 and 4 to jointly and severally pay a sum of Rs.1,68,500/- being another 50% of the award amount to the respondents 1 to 4.

9. Against the said award dated 24.01.2012, made in M.C.O.P. No.123 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 accident has occurred due to negligence on the part of the driver of the Lorry and Tribunal ought to have held that owner and insurer of the Lorry alone are liable to pay compensation. The Tribunal having held that driver of the Tractor drove the vehicle without any valid license and the deceased was unauthorized passenger, ought to have exonerated the appellant-Insurance Company from its liability. The Tribunal considering the evidence of R.W.1 and documents filed and marked by the appellant, ought to have held that the Tractor was used in violation of permit condition. The Tribunal



ought to have seen that the 5th respondent did not pay the premium for his workers. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

WEB COPY

11. Heard learned counsel appearing for the appellant-Insurance Company, respondents 1 to 4 as well as the 7th respondent-Insurance Company and perused the materials available on record.

12. From the materials available on record, it is seen that it is the contention of the respondents 1 to 4 that while the deceased was traveling in the Trailer attached to the Tractor belonging to the 5th respondent after loading manure, the accident has occurred. The driver of the Tractor drove the vehicle in a rash and negligent manner and dashed against the Lorry belonging to the 6th respondent. To substantiate this, the 1st respondent examined herself as P.W.1 and three eye-witnesses were examined as P.W.2 to P.W.4. P.W.2 to P.W.4, eye-witnesses deposed that accident occurred due to rash and negligent driving by both the drivers of Tractor as well as the Lorry. The respondents 1 to 4 marked FIR which was registered against the driver of the Tractor, as Ex.P1. It is the contention of the appellant that at the time of accident, two Trailers were attached to the Tractor in violation of policy and permit conditions and only one Trailer can be attached to the Tractor. The deceased traveled only as an unauthorized passenger in the Tractor, where no person can travel, except driver. The 5th respondent, owner of the Tractor did not pay any premium for load men. At the time of accident, 6 persons traveled in the Trailer loaded with manure. They are unauthorized passengers. The accident occurred only due to the negligence on the part of the driver of Lorry belonging to the 6th respondent and hence, the appellant is not liable to pay compensation. To substantiate this, the appellant examined one of its Official as R.W.1 and marked Exs.R1 to R4. The Tribunal did not accept the evidence of R.W.1 as he was not an eye witness. The Tribunal considering the evidence of P.W.2 to P.W.4 who deposed that the drivers of both the Tractor as well as the Lorry were responsible for the accident, held that both the drivers are equally responsible for the accident and fixed negligence equally on both the drivers and 50% liability on the appellant and 50% liability on the respondents 6 and 7. The Tribunal has given valid reason for coming to the said conclusion even though the FIR was registered against the driver of the Tractor belonging to the 5th respondent. The appellant has not disputed that at the time of accident, manure was loaded in the Trailer and deceased traveled sitting on the manure. Considering this undisputed fact, the Tribunal held that for any violation of policy condition, the appellant is directed to pay 50% of the compensation at the



first instance and recover the same from the 5th respondent as 3rd party claimants should not suffer. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as the quantum of compensation is concerned, the Tribunal considering the age of the deceased, nature of work done by him, fixed monthly salary of Rs.3,000/- and awarded compensation towards loss of dependency. The amounts awarded by the Tribunal under other heads are not meagre, warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.3,37,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit Rs.1,68,500/- being 50% of the award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.123 of 2008 at the first instance and recover the same from the 5th respondent. The respondents 6 and 7 are jointly and severally directed to deposit Rs.1,68,500/- being another 50% of the award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.123 of 2008. On such deposit, the respondents 1 to 3 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 4th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Villupuram.



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

WEB COPY

+1cc to Mr.C.Prabakaran, Advocate SR.38641

C.M.A. No.1820 of 2014

SR(CO)
CB(10/08/2021)