



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2949 of 2014
and M.P. No. 1 of 2014

M/s. United India Insurance Co. Ltd.,
Rep. By its Branch Manager,
Branch Office,
No.12/123/1, Javili Street,
Palamner 517 408.

... Appellant/2nd Respondent

Vs.

1.Venkataramappa

2.Vishalakshumma

3.Kumari

4.Ramesh

5.Suresh B.V. ... Respondents/Petitioners 1 to 4/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2013, made in M.C.O.P. No.37 of 2013, on the file of the District Judge, Special District Court, (Motor Accident Claims Tribunal), Krishnagiri District.

For Appellant : Mr. J. Chandran

For Respondents: Mr. K. Prasanna (For R3 & R4)
for M/s. Mukund R. Pandiyan
No appearance (For R5)

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 31.07.2013, made in M.C.O.P. No.37 of 2013, on the file of the District Judge, Special District Court, (Motor Accident Claims Tribunal), Krishnagiri District.



2.The appellant is the 2nd respondent in M.C.O.P. No.37 of 2013, on the file of the District Judge, Special District Court, (Motor Accident Claims Tribunal), Krishnagiri District. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Gopinath who died in the accident that took place on 26.11.2010.

3.According to the respondents 1 to 4, on the date of accident, the deceased and his friends boarded an Auto bearing Registration No. AP-03-X-4633 belonging to the 5th respondent, from Jownipalli village to go to Mogili Temple to perform irumudi to go to Lord Iyappa temple. While nearing Mogili Ghat road, on seeing a vehicle coming from wrong side of the road with great speed, the driver of the Auto turned the Auto to the left side of the road in a rash and negligent way. Due to the negligent act of the driver of the Auto, the Auto turtled on the road side and thus the accident occurred. In the accident, the deceased sustained fatal injuries. Hence, the respondents 1 to 4 filed claim petition claiming compensation against the 5th respondent as owner and appellant as insurer of the vehicle.

4.The 5th remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the Auto belonging to the 5th respondent was insured with the appellant for the period from 25.05.2010 to 24.05.2011. The driver of the Auto had driving license for Motor Cycle with Gear and LMV alone and he has not obtained badge endorsement. The 5th respondent violated the policy conditions by permitting more than 10 persons including the deceased to travel in the Auto at the time of accident. Hence, the appellant is not liable to indemnify the 5th respondent. In any event, the respondents 1 to 4 have to prove the age, avocation, income and to prove that they are the legal heirs of the deceased to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one Ramamoorthy as P.W.2 and marked 4 documents as Exs.P1 to P4. The appellant examined two witnesses as R.W.1 and R.W.2 and marked 3 documents Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Auto belonging to the 5th respondent and directed the appellant as well as the 5th



respondent to jointly and severally pay a sum of Rs.9,14,000/- as compensation to the respondents 1 to 4.

8. Against the said award of the Tribunal dated 31.07.2013, made in M.C.O.P. No.37 of 2013, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that at the time of accident, 10 persons traveled in the Auto in violation of permit and policy conditions, while seating capacity of the Auto is only 3 + 1. Moreover, the driver of the Auto did not possess badge endorsement. Hence, the appellant-Insurance Company is not liable to pay any compensation. The Tribunal failed to properly appreciate the evidence of R.W.2 and erroneously fastened liability on the appellant. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Learned counsel appearing for the respondents 3 and 4 made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Though notice has been served on the 5th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 3 & 4 and perused the entire materials on record.

13. It is the contention of the learned counsel appearing for the appellant that more persons than permitted capacity of Auto traveled at the time of accident and that driver of the Auto did not possess badge for driving the Auto and therefore, the appellant is not liable to pay compensation to the respondents 1 to 4. From the award of the Tribunal, it is seen that appellant failed to let in any evidence to prove that at the time of accident, more persons than the permitted capacity traveled in the Auto. In the absence of any evidence in support of the contention of the appellant, the Tribunal considering the evidence of P.W.1 and P.W.2 and documents marked, held that driver of the Auto is responsible for the accident and appellant as insurer is liable to pay compensation. There is no error in the award of the Tribunal. Further, it is admitted that driver of the Auto had driving license to drive Light Motor Vehicle. The Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 145 (SC) [Mukund Dewangan Vs. Oriental Insurance Co. Ltd.,], has held that when a person possess driving license to drive a particular class of vehicle, he can drive all the categories of



vehicle in the said class and there is no necessity to obtain badge. In the present case, the driver was driving the Auto which is a Light Motor Vehicle and he possessed driving license to drive Light Motor Vehicle. The contention of the learned counsel appearing for the appellant that driver did not possess badge endorsement is not acceptable. The finding of the Tribunal that driver had valid driving license for driving Auto does not suffer any infirmity. Hence, there is no error in the finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the Tribunal considering the evidences on record with regard to age, avocation and income of the deceased, awarded compensation under different heads, which are not excessive. There is no error in the common award of the Tribunal warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.9,14,000/- 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 as well as the 5th respondent are jointly and severally directed to deposit 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.37 of 2013. On such deposit, the respondents 1 to 4 are permitted to withdraw their share of the award amount, now determined by this Court, along 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

The District Judge,
Special District Court,
(Motor Accident Claims Tribunal),
Krishnagiri District.



Copy to

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

+1cc to Mr.J.Chandran, Advocate Sr.43049
+1cc to Mr.Mukund R.Pandiyar, Advocate Sr.43085

C.M.A. No.2949 of 2014

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srg 31/08/2021