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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3144 of 2014

and

M.P.No.1 of 2014

The Manager,
ICICI Lombard General Insurance Company Limited,
ICICI Bank Towers,
Banthra Kuril Complex, Banthra East,
Mumbai - 400 051. .. Appellant/2nd Respondent

Vs.

1.Mallika
2.Thamilmani
3.Revathi
4.Raja
5.Minor. Ramachandran
6.Minor. Nithiya ...1 to 6 Respondents/Petitioners
(Minor respondents 5 & 6 are represented
by their mother and next friend, Mallika,
1st respondent herein)
7.M.Karthikeyan .. 7th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.01.2009 made in M.C.O.P.No.417 of 2007 on the file of the Motor Accidents Claims Tribunal, District Court, Nagapattinam.

For Appellant : Ms.R.Sreevidhya

For RR 1 to 6 : Mr.M.Thamizhavel

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 23.01.2009 made in M.C.O.P.No.417 of 2007 on the file of the Motor Accidents Claims Tribunal, District Court, Nagapattinam.



3.The appellant is the 2nd respondent in M.C.O.P.No.417 of 2007 on the file of the Motor Accidents Claims Tribunal, District Court, Nagapattinam. The respondents 1 to 6 filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one Pandian, who died in the accident that took place on 04.01.2007.

4.According to respondents 1 to 6, on 04.01.2007 at about 02.30 P.M., while the deceased Pandian was traveling as a Loadman in the 7th respondent's auto bearing Registration No. TN 51 C 4296 from Papakovil to Nariyangudi on Nariyangudi road near Papakovil junction, the driver of the 7th respondent's auto drove the same in a rash and negligent manner and applied sudden brake to avoid hitting a person who was proceeding in front of the 7th respondent's auto. Due to sudden application of brakes, the auto got capsized and hence, the said Pandian fell down from the auto and sustained grievous head injuries. Immediately after the accident, the said Pandian was taken to Government Hospital, Nagapattinam. Thereafter he was shifted to Tanjore Government Medical College Hospital, Tanjore for further treatment. In spite of treatment, the said Pandian succumbed to injuries on 05.01.2007. Therefore, the respondents 1 to 6 filed the said claim petition against the 7th respondent and appellant-Insurance Company, being the owner and insurer of the auto respectively claiming compensation for the death of said Pandian.

5.The 7th respondent-owner of the auto filed counter statment and denied all the averments made by the respondents 1 to 6. According to 7th respondent, the driver of the auto was possessing valid driving license at the time of accident. The deceased was not a Loadman and he was only a pedestrian going on the road. When the 7th respondent's auto met with an accident, the legal heirs of the deceased has come out with the present claim petition seeking compensation. In any event, the quantum of compensation claimed by the respondents 1 to 6 is highly excessive and prayed for dismissal of the claim petition.

6.The appellant-Insurance Company, being the insurer of the auto filed counter statement and denied all the averments made by the respondents 1 to 6. According to the appellant, the driver of the 7th respondent's auto was not possessing valid driving license at the time of accident and drove the auto in violation of policy conditions. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 6. According to respondents 1 to 6, at the time of accident, the deceased along with Singaravelu, Veerasamy and Valli travelled in the auto for doing the work of Loadman. But in the F.I.R., the deposition of Singaravelu shows that they traveled in the auto as passenger to go to their village. The deceased did not



travel in the 7th respondent's auto as Loadman at the time of accident. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 6. For the death of gratuitous passenger, the Insurance Company is not liable to pay the compensation. The respondents 1 to 6 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 6 is exorbitant and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Murugesan, eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the 7th respondent and appellant-Insurance Company, one K.Manikandan, Legal Manager of the appellant was examined as R.W.1 and one M.Pazhani, driver of the 7th respondent's auto at the time of accident was examined as R.W.2 and two documents were marked as Exs.R1 and R2.

8. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the auto belonging to 7th respondent and directed the appellant to pay a sum of Rs.3,52,000/- as compensation to the respondents 1 to 6.

9. Against the said award dated 23.01.2009 made in M.C.O.P.No.417 of 2007, the appellant-Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant-Insurance Company contended that the deceased was an unauthorized passenger in the goods vehicle and the respondents 1 to 6 are not entitled to claim any compensation from the appellant-Insurance Company. In the F.I.R., which was marked as Ex.P1 by the respondents 1 to 6, registered based on the complaint given by one Singaravelu, who traveled along with the deceased at the time of accident, it has been stated that while returning after finishing their work accident has occurred. It is clear from F.I.R., that the deceased and others traveled in the goods vehicle as unauthorized passengers. The Tribunal failed to consider the above facts and without giving any finding on the contention of the appellant that deceased and others are only unauthorized passengers and appellant is not liable to pay any compensation, erroneously held that appellant is liable to pay the compensation and prayed for setting aside the award passed by the Tribunal.

11. Per contra, the learned counsel appearing for the respondents 1 to 6 contended that the deceased and others were Loadmen and they traveled in the offending vehicle after



finishing their work as Loadmen. The respondents 1 to 6 proved the same by examining P.W.2, who is an eyewitness to the accident. The appellant has not let in any contra evidence to prove that deceased and others traveled as unauthorized passengers. The Tribunal considering the materials placed before it, rightly held that appellant is liable to pay the compensation and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 6 and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the contention of the respondents 1 to 6 that the deceased was doing Agricultural Work, Fish Vendor and also a Loadman. On the date of accident, to load and unload paddy bags, the deceased and others traveled in the offending vehicle. To substantiate their contention, the respondents 1 to 6 examined one Murugesan as P.W.2, who is alleged to be the eyewitness. He has not given any complaint before the Police. He also did not travel in the offending vehicle at the time of accident. One Singaravelu, who traveled in the offending vehicle along with deceased and others lodged a complaint based on which F.I.R. was registered. In the F.I.R., it has been mentioned that the said Singaravelu returned along with deceased from duty as Loadman. The said Singaravelu has not stated that after loading goods or unloading goods, they traveled in the offending vehicle. The said Singaravelu was not examined by the respondents 1 to 6. It is the contention of the appellant that deceased and others traveled in the offending vehicle as unauthorized passengers. To substantiate their case, the appellant examined their Legal Manager as R.W.1 and the driver of the 7th respondent's auto was examined as R.W.2 and marked Exs.R1 and R2. R.W.1 deposed that Investigating Officer appointed by the appellant has filed a report, which was marked as Ex.R1, stating that the deceased and others traveled as unauthorized passengers. In the cross examination, R.W.1 did not answer the question for any unauthorized passengers whether pay and recovery can be ordered. The Tribunal without properly appreciating the averments in the claim petition, counter statement, F.I.R. and failure on the part of the respondents 1 to 6 to examine the said Singaravelu, who traveled in the offending vehicle along with deceased and others, evidence of R.W.1, R.W.2, fastened the liability on the appellant without giving any finding with regard to contention of the appellant that deceased was an unauthorized passenger in the offending vehicle. The said finding is erroneous.

14. From the averments in the claim petition and contents of F.I.R., it is clear that deceased and others traveled in the offending vehicle as passengers after finishing their



agricultural work. The respondents 1 to 6 failed to prove that deceased traveled in the offending vehicle only as Loadman. For the above reasons, the award of the Tribunal is liable to be set aside and it is hereby set aside.

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15. In the result, this Civil Miscellaneous Appeal is allowed. The appellant-Insurance Company is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.417 of 2007, if the entire award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge,
Motor Accidents Claims Tribunal,
Nagapattinam.

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

+lcc to M/s.R.Sree vidhya, Advocate, S.R.No.42877

+lcc to Mr.M.Thamizhavel, Advocate, S.R.No.42318

C.M.A.No.3144 of 2014

SSD(CO)
CB(27/08/2021)