



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.2.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1600 of 2013
M.P.No.1 of 2013

The Divisional Manager,
National Insurance Co. Ltd.,
Pudhucherry.

...Appellant/2nd Respondent in Trial Court

..Vs..

1. Padmavathy
2. Sangeetha
3. Kirthika Devi
4. Praveen Kumar
5. Navaneetham
- 6.Viswanathan

... Respondents/Petitioners 1 to 5
and 1st Respondent in Tribunal

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 6.12.2012 made in M.C.O.P.No.883 of 2008 on the file of Principal District Judge (Motor Accidents Claims Tribunal) Puducherry.

For Appellant : Mr.M.Krishnamoorthy
For Respondent No.1 to 4 : Ms.A.Celine
For Respondent No.5 : Notice unserved
For Respondent No.6 : No appearance

JUDGMENT

Brief facts of the case is as follows:

On 17.04.2007 at about 5.00 p.m. While the deceased Raj @ Raju was transporting his art picture banners in a Bajaj Auto load carrier bearing registration No.PY-01-Y-4912 from Puducherry to Cuddalore and when the vehicle was running on the Cuddalore road, opposite to AVB Petrol Bunk, Kanniyakoil from north to south, the driver of the load auto drove the vehicle in a rash and negligent manner and hence, vehicle capsized, thereby caused accident, resulting in Raju sustained grievous injuries all over his body and died during treatment at Government hospital, Puducherry. The legal heirs of the deceased have filed a claim petition before the tribunal claiming compensation



of Rs.20,00,000/- against the appellant/Insurance Company and the sixth respondent herein being the owner of the vehicle.

2. The owner of the vehicle viz., sixth respondent herein remained exparte before the tribunal. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to 17 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 marked.

3 Tribunal, based on the oral and documentary evidence adduced by both sides, came to the conclusion that due to rash and negligent driving of the sixth respondent, the accident occurred. The tribunal while awarding compensation of Rs.5,00,000/-to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization, has held that both appellant/Insurance Company and owner of the vehicle viz., sixth respondent herein are jointly and severally liable to pay compensation to the claimants.

4. Challenging the said award, the Insurance Company has filed the present appeal only against the liability fastened against the Insurance Company. Therefore, quantum of compensation awarded by the tribunal is confirmed.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

6. Considering the oral and documentary evidence, tribunal has held that the appellant/Insurance Company and the owner of the vehicle viz., sixth respondent are jointly and severally liable to pay compensation to the claimants. According to the counsel appearing for the appellant/Insurance Company, the deceased travelled in a goods vehicle as a passenger of the vehicle and therefore, the deceased travelled in the vehicle as unauthorised passenger. Hence, sixth respondent has violated the policy conditions of Insurance Company. Tribunal has not considered the point in a proper perspective. Therefore, finding of the tribunal against the Insurance Company is liable to be set aside.

7. The learned counsel appearing for the respondents 1 to 5/ claimants would submit that the deceased Raj @ Raju was an Artist at the time of accident. While he was transporting art pictures, banners in the vehicle, he also travelled in the said vehicle. He is owner of the goods and as per the policy condition, the policy also cover owner or agent of the goods. Therefore, the tribunal rightly fastened liability against the Insurance Company.



8 According to the counsel appearing for the appellant/ Insurance Company, owner of the vehicle, the sixth respondent herein has violated the policy conditions. The deceased Raju travelled in the sixth respondent vehicle as unauthorised passenger and therefore, the Insurance Company is not liable to pay compensation to the claimants. The deceased travelled in the insured vehicle as owner of the goods and the policy of the vehicle would also cover owner of the vehicle. Therefore, the tribunal has rightly fixed the liability on the part of the appellant/Insurance Company and the finding of the tribunal is sustainable in law. As such, there is no warrant to interfere with the award of the tribunal.

9 The appellant/Insurance company is directed to deposit the entire compensation amount awarded by the tribunal along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of copy of the judgment after deducting the amount if any already deposited before the tribunal. On such deposit being made by the appellant/Insurance Company, the claimants/respondents are entitled to withdraw the amount by filing appropriate application.

9. In view of the above, the appeal stands dismissed with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
(Motor Accidents Claims Tribunal) Puducherry

Copy to: The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to Mr.A.Chaline, Advocate, S.R.No.9815
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.9493

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