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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D. KRISHNAKUMAR

C.M.A.No.240 of 2012
and
M.P.No.1 of 2012

M/s. United India Insurance Company Limited,
represented by its Branch Manager,
Ranipettai.

...Appellant / 2nd Respondent

..VS..

1. Veeramal
2. Balamurugan
3. Krishnan

...Respondents 1 & 2 / Petitioners
...3rd Respondent / 1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in MACTOP.No.246 of 2000 dated 10.02.2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Tiruvannamalai.

For Appellant : Ms. Renuka Devi
for Mr. Raja Kalifulla

For Respondents : No appearance for R1 and R2
R3 - Notice unserved

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree in MACTOP.No.246 of 2000 dated 10.02.2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Tiruvannamalai.

2. On 23.08.1999 at about 1.30 p.m. the deceased Thangavel was travelling in the van bearing Regn. No. TN-45-W-



4649 as a Labourer and when the van reached Adaiyur at Tiruvannamalai near Murugan temple, due to the rash and negligent driving of the driver, the van capsized and the deceased died on the spot. Claiming that the accident had happened due to the rash and negligent driving of the driver of the van owned by the 3rd respondent herein, insured with the appellant herein the respondents 1 and 2/ claimants have filed a claim petition before the Tribunal claiming an award of Rs.3,00,000/- as compensation.

3. Before the Tribunal, PW1 and PW2 were examined on the side of the claimants and Ex.A1 to Ex.A5 were marked. On the side of the respondents no witnesses were examined and no documents were marked. Based on the oral and documentary evidence, the Tribunal has fastened the liability on the appellant/ Insurance Company and awarded a sum of Rs.2,17,000/- along with the interest at 9% p.a. as compensation. Against the said award, the Insurance Company has come up on appeal.

4. The learned counsel for the appellant would submit that the 3rd respondent is the owner of the vehicle bearing Regn.No.TN-45-W-4649 is a goods vehicle, which had involved in the accident and the same is insured with the appellant/ Insurance Company. The said goods vehicle was used for a political meeting at Tiruvannamalai carrying passengers as alleged in the FIR complaint. The deceased had travelled as un-authorized person in the goods vehicle and therefore, the policy is not covered as against the un-authorized passengers. Therefore, the appellant/ Insurance Company is not liable to pay the compensation to the respondents/ claimants and the interest granted by the Tribunal at 9% p.a. is excessive and the same is also to be modified.

5. Heard the learned counsel for the appellant. Though notice served on the respondents none appeared for the respondents.

6. The instant appeal is by the appellant/ Insurance Company on the ground that the appellant/ Insurance Company is not liable to pay the compensation as the vehicle involved in the accident is a goods vehicle and the deceased travelled in the vehicle as an un-authorized passenger. On a perusal of the documents marked before the Tribunal, the claimants have marked



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the certified copies of the FIR, Motor Vehicle Inspector's Report, Post-mortem certificate, charge sheet and the judgment in C.C.No.212 of 2002 on the file of the Judicial Magistrate No.II, Tiruvannamalai and on the side of the respondent/Appellant herein no documents were marked and no evidence adduced before the Tribunal. Therefore, there is no evidence produced before this court to satisfy that the said van involved in the accident bearing Regn.No.TN-45-W-4649 is a goods vehicle. Thus, this court cannot accept the contention of the appellant/ Insurance Company that the said vehicle is a goods vehicle and the deceased travelled as an un-authorized passenger. Therefore, in the absence of any documentary evidence or any other substantial evidence to prove the contention of the appellant/ Insurance Company that the deceased is an un-authorized passenger travelled on the goods vehicle, the same cannot be accepted and the said contention is liable to be rejected. Therefore, the reason as found in the award of the Tribunal as against the liability is concerned is perfectly valid and does not warrant interference of this court.

7. The second contention of the appellant/ Insurance Company is regarding the rate of interest awarded by the Tribunal. The said contention of the learned counsel for the appellant has some force. Accordingly, the interest rate fixed by the Tribunal at 9% per annum from the date of petition, stands modified to 7.5% per annum from the date of petition.

8. In the result, the Civil Miscellaneous Appeal is partly allowed by upholding the findings of the Tribunal, on liability of the appellant to pay the compensation and by modifying the interest rate from 9% to 7.5% per annum from the date of petition. The appellant is directed to deposit the compensation amount with the modified interest rate of 7.5% per annum from the date of petition, less the amount if any already deposited within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same as per the ratio apportioned by the Tribunal, on making proper application. No costs. Consequently, the connected miscellaneous petitions are closed.

9. The learned counsel for the appellant/ Insurance Company would now submit that the entire award amount was



deposited before the Tribunal. It is seen from the records that there is no interim order of stay granted by this court. Therefore, it is made clear that if the compensation amount is already withdrawn by the claimants, there is no question of recovery as against the claimants.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

dsa

To

The Motor Accidents Claims Tribunal,
Principal District Judge,
Tiruvannamalai.

+1cc to Mr.J.Rajakalifulla, Advocate SR.No.7394

CMA.No.240 of 2012

GJ(CO)
RVM(16/09/2021)