



WEB COPY

In the High Court of Judicature at Madras

Dated: 23.03.2021

Coram

The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A. No.3035 of 2012
and M.P.No.1 of 2012

The Branch Manager,
National Insurance Co. Ltd.,
No.81-D, Chetty Street,
Thiruchengode,
Namakkal District.

... Appellant/2nd Respondent

..Vs..

1.Meena
2.Minor Yamuna
3.Minor Nivedha
4.Venkatammal
5.V.Murugan

...Respondents/Petitioners

Minors are rep. by their next friend
& mother Meena

... Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Additional District Judge, (MACT), Krishnagiri in M.C.O.P.No.454 of 2008 dated 17.02.2012.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

Challenging the award passed by the learned Additional District Judge, (MACT), Krishnagiri in M.C.O.P.No.454 of 2008 dated 17.02.2012, the appellant/Insurance Company has preferred the instant appeal.

2.Heard Mr.S.Arun Kumar, learned counsel appearing on behalf of the Insurance Company. It is submitted by the learned counsel for the appellant that despite their efforts, notice was not served on the fifth respondent. Hence with the consent of the learned counsel for the appellant, the matter has been taken today through Video Conferencing.

3.The brief facts of the case is as follows:

a)On 06.02.2003, when the deceased Gujjappan was travelling in the Tempo bearing Registration No.TAE 1618 to Muniappan Koil



along with others, while nearing Palaiyoor junction, due to the rash and negligent driving of the driver of the Tempo, the vehicle capsized. In the said accident, the deceased Gujjappan sustained grievous injuries. Despite treatment, he died on 14.02.2003. The legal heirs of the deceased filed a claim petition, claiming a sum of Rs.5 lakhs as compensation towards his death.

b) Before the Tribunal, P.W.1 was examined and Ex.P1 to Ex.P10 was marked on the side of the claimants and RW1 and Ex.R1 and R2 were marked on the side of the respondent Insurance Company. The Tribunal, on considering the oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tempo vehicle and awarded a sum of Rs.4,25,000/- as compensation to the claimants and directed the Insurance Company to pay the compensation at the first instance to the claimants and to recover the same from the owner of the vehicle.

4. Aggrieved over the same, the Insurance Company has preferred the present appeal as against fastening the liability on them.

5. According to the appellant, the respondents 1 to 4 filed the claim petition as against the respondents therein to claim a compensation amount of Rs.5 lakhs towards the death of one Gujjappan due to the grievous injuries sustained by him in the accident that took place on 06.02.2003. The Tribunal, on considering the oral and documentary evidence has fixed the negligence on the part of the offending insured vehicle of the appellant Insurance Company. The appellant has also raised a specific ground before the Tribunal stating that the deceased has travelled as an unauthorised passenger and therefore, the Insurance Company is not liable to pay compensation, when there is violation of policy. The Tribunal, on considering the evidence fastened the liability as against the Insurance Company and directed the respondents jointly or severally to pay a sum of Rs.4 lakhs to the claimants towards the death of the deceased. According to the appellant, admittedly, the deceased has travelled as an unauthorized passenger in the offending insured tempo vehicle and fastened the liability as against the Insurance Company is unfounded and the same is unsustainable in law.

6. However, the relief sought for by the appellant/Insurance Company in the instant appeal is as against the fifth respondent/the owner of the vehicle, who had permitted the deceased to travel as an unauthorised passenger in the goods vehicle. The accident had occurred on 06.02.2003 and the claim petition was filed in the year 2008. Notice was not served to



the fifth respondent. It is reported that they have taken efforts to serve the notice on the fifth respondent/owner of the vehicle but the same was not served. This Court, by order dated 19.01.2021 had already indicated that if proof of service was not filed on the next date of hearing, the appeal will be dismissed as against the fifth respondent. Hence, the appeal has been dismissed as against the fifth respondent/owner of the offending vehicle. This Court is of the view that the findings of the Tribunal in the claim petition does not require any interference. Thus, the award passed by the Tribunal is confirmed. It is for the Insurance Company to recover the award amount from the owner of the vehicle in the manner known to law. In view of the foregoing reasons, the Civil Miscellaneous Appeal is dismissed. Connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Additional District Judge,
(The Motor Accident Claims Tribunal)
Krishnagiri.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.18789

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and
M.P.No.1 of 2012

MG(CO)
CB(20/09/2021)