



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3273 of 2012
and M.P.No.1 of 2012

M/s.United India Insurance Company Ltd.,
Branch Office,
No.6/659, Trichy Road,
Ramanathapuram,
Coimbatore.

.. Appellant/ 3rd Respondent

Vs.

1.S.Umavathy

2.Minor S.Surya

(Minor rep. by mother & guardian, 1st respondent)

... Respondents 1 & R2/Claimants

3.M.Kalaimani

... Respondents 3/Respondents 1

4.M/s.P.S.G.Institute of Medical
Science & Research,
Peelamedu,

Coimbatore 641 004.

..4th Respondent/2nd Respondent

(R3 set exparte in lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.03.2010 in M.C.O.P.No.221 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District Court/Presiding Officer), Coimbatore.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.R.Navaneetha Krishnan for R1 & R2
R3-Ex-parte
R4-No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 09.03.2010



in M.C.O.P.No.221 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court/Presiding Officer, Coimbatore.

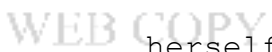
2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.221 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court/Presiding Officer, Coimbatore. The respondents 1 and 2 filed the said claim petition against the respondents 3 & 4 and the appellant/Insurance Company, claiming a sum of Rs.10,00,000/- as compensation for the death of one P.Subramaniam, who died in the accident that took place on 30.01.2003.

3.According to the respondents 1 and 2, on the date of accident i.e., 30.01.2003 at about 3.45 p.m., while the deceased Subramaniam along with his wife and a relative was travelling in the van bearing Registration No.TN 37 Y 2724 belonging to the 4th respondent within the P.S.G.Hospital Campus, the 3rd respondent, driver of the van drove the same in a rash and negligent manner and while taking a turn near Pillaiyar Kovil, due to uncontrollable speed, the back door of the van suddenly opened and the deceased fell on the road. Due to the accident, the deceased died after 2 days of treatment.

4.The driver of the van, 3rd respondent remained exparte before the Tribunal.

5.The 4th respondent/owner of the van filed counter statement stating that the premises are situated one kilometer South of Avinashi-Coimbatore road at Peelamedu and in order to help the patients to cross the said distance, they are operating a free van services and one such van is the offending vehicle. On the date of accident, the 3rd respondent, driver of the van closed the rear door and locked the same. While the van was turning suddenly, the rear door of the van opened, the deceased Subramaniam, who sat near the door of the van, fell down. The said van was insured with the appellant/Insurance Company at the time of accident and therefore, the appellant is liable to pay compensation to the respondents 1 and 2.

6.The appellant/Insurance Company filed counter statement, denying the averments made in the claim petition and stated that inmates of the van should ensure that doors of the van were properly locked after their accomodation in the van, while they were traveling. The deceased has not taken any such precaution and hence, the appellant is not liable to pay any compensation to the respondents 1 and 2. The appellant has also



7. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Manikandan was examined as P.W.2 and marked 8 documents as Exs.P1 to P8. The 4th respondent examined one of his personal Officer Kannappa Nainar as R.W.1 and marked R.C.Book copy as Ex.R1.

9.Challenging the liability fastened on them, the appellant/Insurance Company has come out with the Civil Miscellaneous Appeal.

11. Though notice has been served on the 4th respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

13. It is the case of the respondents 1 and 2 that on 30.01.2003 at about 3.45 p.m., the deceased was traveling along with his wife, 1st respondent and one relative in the van



belonging to the 4th respondent. At that time the back door of the van suddenly opened, due to rash and negligent driving by 3rd respondent, driver of the van, while taking a turn and the back door of the van suddenly opened, the deceased was thrown out of the van, sustained head injury and inspite of the treatment, he died after two days of the accident. To substantiate the same, the 1st respondent, who was traveling along with the deceased at the time of accident, examined herself as P.W.1 and marked First Information Report as Ex.P1, which was registered against the driver of the van, 3rd respondent. It is the case of the 4th respondent that the 3rd respondent closed the door and locked the van. When the 3rd respondent was turning the van, rear door of the van suddenly opened and the deceased, who was sitting near the door, fell down. The 4th respondent Hospital provided free treatment to the deceased. The van is being used for taking patients and visitors at free of cost to the hospital. The van is insured with the appellant and if any compensation is payable, only the appellant is liable to pay the compensation and marked R.C.Book as Ex.R1.

14.On the other hand, it is the case of the appellant that it is the duty of the persons who are traveling in the van, to close the door after sitting in the van. The deceased and others did not properly close the door and hence, the deceased also contributed to the accident. To prove their submissions, the appellant did not examine any witness. The learned counsel appearing for the appellant now in the appeal contended that while the deceased was standing in the foot board near the door as he did not get place to sit, fell down, when the door opened and hence he has also contributed to the accident. In the appeal, the learned counsel appearing for the appellant further contended that the van has been used to carry passengers for hire. The appellant has not raised the said issue before the Tribunal and has not let in any evidence to disprove the case of the respondents 1, 2 and 4. The Tribunal considering the evidence of P.W.1, documents filed and in the absence of any contra evidence, held that the accident occurred only due to rash and negligent driving by the 3rd respondent, driver of the van and the appellant as insurer of the van is liable to pay compensation to the respondents 1 and 2. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.6,42,000/- 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 is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.221 of 2007. On such deposit, the 1st respondent is permitted to withdraw her respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minor/2nd respondent is ordered to be deposited in any one of the Nationalised Banks till he attains majority. The mother of the minor/1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vkrr

To

1.The Additional District Judge/Presiding Officer,
Motor Accident Claims Tribunal,
Coimbatore.

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

+1cc to Mr.R.Sreevidhya, Advocate SR.No.63095

+1cc to Mr.R.Navaneetha Krishnan, Advocate SR.No.62671

C.M.A.No.3273 of 2012
and M.P.No.1 of 2012

SSN(CO)
GN(20/01/2022)