IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2860 of 2016
and
CMP No.20693 of 2016

The Divisional Manager,
ICICI Lombard General
Insurance Co. Ltd.
Chetpet,
Chenna i - 600 031. ... Appellant/2nd Respondent

Versus

1. Latha
2. Minor Vijayalakshmi
3.Minor Annamalai
(Minors rep by Natural Friends/Guardian Mother Latha)
4. Raman
5.Malliga ... Respondents 1 to 5/Petitioners 1 to 5
6.Jayavelu ...6th Respondent/1st respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.12.2015 in MCOP No.142 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District & Sessions Judge) at Vellore at Ranipet.

For Appellant : Mrs.R.Sree Vidhya
For Respondents1 to 5 : Mr.M.Sivakumar
For Respondent No.6 : No appearance

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the Insurance Company challenging the award dated 22.12.2015 passed by the Motor Accident Claims Tribunal (II Additional District & Sessions Judge) at Vellore at Ranipet in MCOP No.142 of 2012.

2. The appellant / Insurance Company has challenged the impugned award only on the ground that the deceased was an

unauthorised passenger at the time of the accident as according to them, the insured vehicle is a goods vehicle and since the deceased travelled in the said vehicle as an unauthorised passenger, they are not liable to compensate the claimants, who are the dependants of the deceased.

3. Heard Ms. R.Sreevidhya, learned counsel for the appellant/Insurance Company and Mr.M.Sivakumar, learned counsel for the respondents / claimants.

4. This Court has perused and examined the impugned award before the Tribunal.

5. In the claim petition, the respondents / claimants, who are the dependants of the deceased have pleaded that when the deceased was travelling in TATA ACS van bearing Registration No.TN-23-AP-4614 to bring the wood for his Sweet Stall at Kalavai, due to rash and negligent driving of the driver of the said van, the deceased fell down and sustained multiple injuries on his head and all over the body, which resulted in his death. It is the case of the claimants that as seen from the claim petition that the deceased was travelling in the insured goods vehicle only to bring wood for his sweet stall at Kalavai.

6. Before the Tribunal, the claimants have filed seven documents, which were marked as Exs.P1 to P7 and three witnesses were examined viz., the wife of the deceased as PW1; an eye witness to the accident as PW2 and the employer of the deceased Natarajan as PW3. On the side of the appellant / Insurance Company, three witnesses were examined viz., RW1 to RW3, but no documents filed before the Tribunal.

7. The insured goods vehicle can carry upto a maximum of two persons including the Driver. In the case on hand, admittedly, as seen from the evidence available on record, which includes the FIR and final report, it is clear two persons travelled in the said vehicle viz., the Driver and the deceased. A consistent stand has been taken by the claimants before the Tribunal that the deceased worked as a Sweet Master at Natarajan Sweet Stall and he was travelling in the goods vehicle only to bring wood for his Sweet Stall. The oral and documentary evidence placed before the Tribunal also reveal that there are no inconsistencies with regard to the pleadings made by the claimants in their claim petition that the deceased was travelling in the goods vehicle only for the purpose of bringing wood for the Sweet Stall. No contra evidence has been produced by the appellant / Insurance Company to disprove the contention of the claimants that the deceased was travelling in the goods vehicle only to bring wood for the Sweet Stall. Based on preponderance of probability, the Tribunal has held that the

appellant / Insurance Company is liable to compensate the claim of the claimants. This Court does not find any infirmity in the findings of the Tribunal. Hence, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.142 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District & Sessions Judge) at Vellore at Ranipet, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1,4 and 5 / major claimants through RTGS, within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Insofar as the share of the second and third respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. If the minor claimants have attained the age of majority, it is open to them to file formal petition before the Tribunal to get their share of apportionment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The II Additional District & Sessions Judge,
Vellore, Ranipet.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.32300
+1cc to Mr.M.Sivakumar, Advocate, S.R.No.32076

CMA No.2860 of 2016

GPL(CO)
CB(26/10/2021)