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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1872 & 1874 of 2020
and
CMP.Nos.13870 & 13878 of 2020

The Divisional Manager,
The New India Assurance Company Limited,
Vellore. ... Appellant/2nd Respondent
(in both C.M.As)

Vs.

1.Israth
2.Jamruthin
3.Sharmila ... Respondents 1 to 3/Petitioners/Claimants 1 to 3
in CMA No.1872 of 2020
4.A.Irfan ... 4th Respondent/Ist Respondent in
C.M.A.No.1872 of 2020

1.Shabeeha Banu
2.Minor. Mohamed Shayaed
(Minor 2nd respondent represented by his Next Friend &
Guardian Mother Shabeeha Banu, 1st respondent herein)
3.Noorjagan ... Respondents 1 to 3/Petitioners/Claimants 1 to 3
in CMA No.1874 of 2020
4.A.Irfan ... 4th Respondent/1st Respondent
in C.M.A.No.1874 of 2020

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 16.12.2019 made in M.C.O.P.Nos.314 & 356 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court, Vellore at Tirupattur.

In both C.M.As:

For Appellant : Ms.A.Salomi
for Mr.C.Ramesh Babu



COMMON JUDGMENT

The matter is heard through "Video Conferencing/Hybrid mode".

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2. These Civil Miscellaneous Appeals are filed by the Insurance Company to set aside the common award dated 16.12.2019 made in M.C.O.P.Nos.314 & 356 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur.

3. Both the Civil Miscellaneous Appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

4. The appellant-Insurance Company is the 2nd respondent in M.C.O.P.Nos.314 & 356 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur. The respondents 1 to 3 in both the appeals filed the claim petitions in M.C.O.P.Nos.314 & 356 of 2016 respectively, claiming a sum of Rs.20,00,000/- each as compensation for the death of Muneer Basha and Shamil Ahmed, who died in the accident that took place on 25.05.2016.

5. According to respondents 1 to 3 in both the appeals, on 25.05.2016 at about 09.30 P.M., while the said Muneer Basha and Shamil Ahmed were traveling as coolie in the Eicher Lorry bearing Registration No.TN 04 M 0860 owned by 4th respondent on the Tirupattur - Dharmapuri Main Road, near Kakkangarai Earikodi, the driver of the lorry drove the same in a rash and negligent manner and suddenly applied brake, due to the same, the lorry got capsized and fell down on the left side of the road and the accident occurred. In the accident, the said Muneer Basha and Shamil Ahmed, sustained head injuries and lost their consciousness. Immediately after the accident, they were taken to Government Hospital, Tirupattur. In spite of treatment, the said Muneer Basha and Shamil Ahmed succumbed to injuries on the same day. Therefore, the respondents 1 to 3 in both the appeals filed the above said claim petitions respectively claiming a sum of Rs.20,00,000/- each for the death of the said Muneer Basha and Shamil Ahmed against the 4th respondent and appellant-Insurance Company, being the owner and insurer of the lorry.

6. The 4th respondent-owner of the lorry remained exparte before the Tribunal.

7. The appellant-Insurance Company filed separate counter statements and denied all the averments made by the respondents 1 to 3 in both the claim petitions. The appellant denied the manner of accident as alleged by the respondents 1 to 3 in both



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the appeals. According to the appellant at the time of accident, both the deceased along with K.Athik Basha and Surya traveled in the lorry by sitting adjacent to the driver of the lorry and the same was mentioned in the F.I.R. and also the same was accepted by the complainant. Therefore, they violated the traffic rules and regulations. The lorry is used only for loading and unloading of broilers. The driver of the lorry was not possessing valid driving license and the lorry was not having valid Registration Certificate, permit and Fitness Certificate. The driver of the lorry drove the same in a rash and negligent manner and caused the accident. Further, the driver of the lorry breached the terms and conditions of the policy by permitting the above said persons to travel along with him in the lorry. Therefore, the said Muneer Basha and Shamil Ahmed traveled in the lorry as unauthorized passengers and hence, the appellant is not liable to pay any compensation to the respondents 1 to 3 in both the appeals. The said Muneer Basha and Shamil Ahmed also contributed negligence to the accident by traveling in the lorry as unauthorized passengers. The respondents 1 to 3 in both the appeals have to prove that they are entitled to get the compensation from the appellant. The appellant-Insurance Company denied the age, avocation and income of the deceased persons. In any event, the quantum of compensation claimed by the respondents 1 to 3 in both the appeals are highly excessive and prayed for dismissal of both the claim petitions.

8.Before the Tribunal, the 1st respondent in C.M.A.Nos.1874 & 1872 of 2020 examined themselves as P.W.1 & P.W.2 and one Venkatesan, eyewitness to the accident was examined as P.W.3 and 11 documents were marked as Exs.P1 to P11. On behalf of the appellant-Insurance Company, one Seshathiri was examined as R.W.1 and copy of R.C., permit and F.C. was marked as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 4th respondent and directed the appellant-Insurance Company to pay a sum of Rs.19,14,400/- each as compensation to the respondents 1 to 3 in both the appeals at the first instance and recover the same from the 4th respondent-owner of the lorry.

10.Challenging the said common award dated 16.12.2019 made in M.C.O.P.Nos.314 & 356 of 2016, the appellant-Insurance Company have come out with the present appeals.

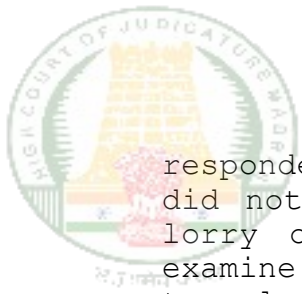
11.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that the appellant is liable to pay the compensation to the respondents 1 to 3 in both the appeals, while the deceased Muneer Basha and



Shamil Ahmed have travelled as unauthorized passengers in the offending vehicle. When there is no liability for the appellant, the Tribunal erroneously ordered pay and recovery. The gratuitous passengers who traveled in the goods vehicle are not covered under Section 147 of the Motor Vehicles Act. They are not third parties and the appellant is not liable to pay any compensation to the gratuitous passengers and the Tribunal ought to have exonerated the appellant-Insurance Company from its liability. The learned counsel appearing for the appellant relied on the Full Bench judgment of this Court reported in 2009 (1) TNMAC-1 (F.B), [United India Insurance Company Limited Vs. Nagammal and others] wherein it has been held that when insurer is not liable to pay the compensation, question of pay and recovery does not arise. Therefore, the Tribunal ought to have directed the 4th respondent-owner of the lorry to pay the compensation to the respondents 1 to 3 in both the appeals and dismissed both the claim petitions filed by the respondents 1 to 3 in both the appeals against the appellant and prayed for setting aside the award passed by the Tribunal.

12.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

13.It is the case of the respondents 1 to 3 in both the appeals that while the deceased Muneer Basha and Shamil Ahmed were traveling in the Eicher Lorry owned by 4th respondent for loading and unloading, the driver of the Eicher Lorry drove the same in a rash and negligent manner and due to the same, the lorry capsized and the said Muneer Basha and Shamil Ahmed sustained fatal injuries and died. In support of their case, the 1st respondent in both the appeals examined themselves as P.W.1 & P.W.2 and examined one Venkatesan, eyewitness to the accident as P.W.3 and marked F.I.R. as Ex.P1, which was registered against the driver of the Eicher Lorry. On the other hand, it is the case of the appellant that both the Muneer Basha and Shamil Ahmed have travelled in the Eicher Lorry as unauthorized passengers by sitting in the driver cabin along with two others and hence, the appellant is not liable to pay the compensation to the respondents 1 to 3 in both the appeals. In support of their case, the appellant examined one Sheshathiri as R.W.1 and marked copy of R.C. Book, permit and F.C. as Ex.R1. R.W.1 is the Junior Assistant from RTO, Ranipettai and he deposed that the Eicher Lorry owned by 4th respondent was having valid permit at the time of accident. R.W.1 did not depose that the driver of the Eicher Lorry was not possessing driving license at the time of accident. The Tribunal considering the evidence of P.W.1, P.W.2, P.W.3/eyewitness, R.W.1 and Ex.P1/F.I.R. and in the absence of any rebuttal evidence on the side of the appellant, held that accident has occurred only due to rash and negligent driving by the driver of the Eicher Lorry owned by 4th

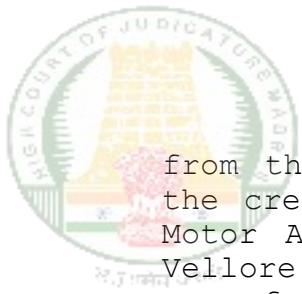


respondent. The appellant contended that the deceased persons did not travel in the lorry as loadmen but they travel in the lorry only as unauthorized passengers. The appellant did not examine any independent witness to prove that deceased persons traveled as unauthorized passengers. On the other hand, it is the case of the respondents 1 to 3 in both the appeals that the deceased traveled in the Eicher Lorry only as loadmen and in the F.I.R. it was clearly mentioned that they travelled as loadmen for loading and unloading the goods.

14.The Tribunal considering the contention of appellant that the deceased persons traveled in the Eicher Lorry as unauthorized passengers and evidence of P.W.1 to P.W.3 and contents of Ex.P1/F.I.R., held that deceased traveled only as loadmen in the Eicher Lorry. Further, the appellant failed to prove that the Driver of the Eicher Lorry was not possessing driving license at the time of accident. The appellant examined R.W.1/Junior Assistant from RTO, Ranipettai to prove the said contention. But they have not proved that Driver of the Eicher Lorry was not possessing driving license. The Tribunal erroneously placed onus on the 4th respondent-owner of the Eicher Lorry to prove that the Driver of the Eicher Lorry did not possess driving license. When the appellant has taken specific stand that the Driver of Eicher Lorry did not possess driving license, it is for the appellant to prove the said contention.

15.From the award of the Tribunal, it is seen that the Tribunal has fixed liability on the 4th respondent to pay the compensation to the respondents 1 to 3 in both the appeals as he only allowed the driver who was not possessing valid driving license to drive the Eicher Lorry. It is not in dispute that at the time of accident there was valid insurance policy issued by the appellant. When there was no evidence to prove that driver of the offending vehicle did not possess driving license, the Tribunal erroneously ordered pay and recovery. The contention of the learned counsel appearing for the appellant that Tribunal having held that deceased persons are unauthorized passengers, erroneously ordered pay and recovery is contrary to the finding of the Tribunal. The Tribunal has given a clear finding that the deceased persons traveled in the lorry only as loadmen. Hence, there is no infirmity or illegality in the award passed by the Tribunal warranting interference by this Court.

16.In the result, both the Civil Miscellaneous Appeals are dismissed and a sum of Rs.19,14,400/- each awarded by the Tribunal as compensation to the respondents 1 to 3 in both the appeals together with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the respective award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks



from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.314 & 356 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur, at the first instance and recover the same from the 4th respondent. On such deposit, the respondents 1 to 3 in C.M.A.No.1872 of 2020 and the respondents 1 & 3 in C.M.A.No.1874 of 2020 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment apportioned by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 2nd respondent in C.M.A.No.1874 of 2020 is directed to be deposited in any one of the Nationalized Banks, till he attains majority. On such deposit, the 1st respondent in C.M.A.No.1874 of 2020, being the Mother of the minor 2nd respondent in C.M.A.No.1874 of 2020 is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd respondent in C.M.A.No.1874 of 2020. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Tirupattur,
Vellore.

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

+2cc to Mr.C.Ramesh Babu, Advocate Sr.17411, 17412

C.M.A.Nos.1872 & 1874 of 2020

srg 12/11/2021