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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2101 of 2018

and

C.M.P.No.16350 of 2018

The Legal Manager,
Reliance General Insurance Co.Ltd.,
No.628, II Floor, Thenampettai,
Anna Salai, Chennai.

...Appellant / 2nd Respondent

Vs

1.Mururgan

2.Minor Murali
S/o.Mururgan

3.Minor Bhavani
D/o.Mururgan

4.Minor Kaviya
D/o.Mururgan ...Respondents 1 to 4 / Petitioners
(Minors rep. by their NF,
Father Murugan)

5.Kasthuri Rggly Zindan Gas Agency,
Situate at No.138/1A,Su.Nallur Road,
Andampallam Village & Post,
Tiruvannamalai Taluk. ...5th Respondent / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 09.02.2018 made in M.C.O.P.No.317 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannalai.

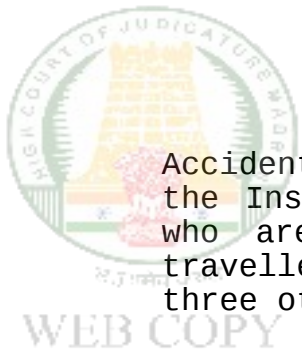
For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.J.Lenin for R1 to R4
Mr.Saravana Kumar for R5

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award passed by the Motor



Accident Claims Tribunal, Tiruvannamalai fixing the liability on the Insurance Company to pay the compensation to the claimants who are the legal heirs of the deceased Muthulakshmi, who travelled in the TATA ACE carrying Hallow bricks along with three other persons.

3. The facts of the case is that, on 11.05.2014 at about 3.00 p.m., when Muthulakshmi along with one Lakshmi and Murugan travelled in a TATA ACE bearing registration No.TN 25 AF 6734 loaded with Hallow brick stone, the said vehicle met with an accident and capsized. In the said accident, Muthulakshmi sustained grievous injuries on her forehead, left hand, right foot, right side upper mouth and fracture on right side ribs and she died in the hospital. Hence, claim petition is filed by her husband and the minor children claiming compensation of Rs.10,00,000/- that she was working as a coolie and earning Rs.250/-, she was 35 years old and the entire family was depending on her.

4. The contention raised by the respondent/Insurance Company is that the deceased was an unauthorised passenger in a goods vehicle. The accident occurred due to the negligence of the driver of TATA ACE vehicle who had violated the policy condition as well as the Motor Vehicles Act by carrying passengers unauthorisedly in the vehicle meant for carrying goods. Therefore, the claimants are not entitled for any compensation.

5. Before the Tribunal, the claimants examined two witnesses and marked three exhibits. On behalf of the respondent, one witness was examined and four exhibits were marked.

6. The Tribunal awarded a sum of Rs.15,05,200/- as compensation to the claimants rejecting the plea that the deceased is an unauthorised passenger. According to the Tribunal, the deceased travelled in the TATA ACE vehicle as coolie and as per the insurance policy, the Insurance Company is liable to indemnify the owner for the said loss.

7. The said award is challenged by the Insurance Company on the ground that the Tribunal erred in directing the appellant to pay the compensation, in spite of the fact that the respondent has not proved that the deceased was employed as coolie and was travelling in the goods vehicle as a coolie at the time of accident. The evidence of PW.1 and PW.2 were accepted by the Tribunal, though they are interested witnesses. In the absence of evidence that the deceased was travelling in the goods vehicle in the course of employment, the Tribunal ought not to have directed the Insurance Company to pay the compensation.



8. The learned counsel appearing for the appellant relying upon a judgment of this Court in Bharati AXA General Insurance Co.Ltd., Vs. Minor. Sumathi rep.by her guardian & father Andi and another (C.M.A.Nos.1987 of 2019 etc batch) would submit that the unauthorised passengers travelling in a goods vehicle are not entitled for any compensation. While the Insurance policy Ex.R1 indicates that the seating capacity of the vehicle including the driver is only two and from the FIR, it is clear that more than five persons were travelled in the vehicle along with goods and those persons were considered as coolie by the Tribunal. It is also clear from the Ex.R2 and Ex.R3 that the driver of the van had no valid driving license and he failed to produce it when he was called for to furnish the same.

9. The learned counsel for the appellant fairly brought to the notice of this Court that in the connected appeals filed by the Insurance Company against the award passed in the claim petition filed by other two injured persons, arising out of same accident, this Court dismissed the appeals in C.M.A.Nos.3347 and 3350 of 2019 upholding the judgment of the Tribunal.

10. In the light of the above facts, in order to follow uniformity, this Court is not inclined to interfere with the award of the Tribunal though the Insurance Company has made out the case that there is a violation of policy condition by permitting more than five persons in a goods vehicle which has seating capacity to carry only two persons including the driver. Since there is violation of the policy condition by entertaining excess persons against the permitted seating capacity, this Court is of the view that the Insurance Company shall be permitted to recover the award amount after making payment to the claimants.

11. As a result, this Civil Miscellaneous Appeal is disposed of, confirming the quantum of compensation payable by the appellant with right to recover from the owner of the vehicle/5th respondent herein. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

rpl



To

1.The Motor Accident Claims Tribunal,
Special Sub Court, Tiruvannamalai.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.16060

+1cc to Mr.J.Lenin, Advocate SR.No.16613

C.M.A.No.2101 of 2018
and
C.M.P.No.16350 of 2018

NBL(CO)
RVM(15/09/2021)