IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3259 & 3260 of 2014
and
M.P.Nos.1 & 1 of 2014
and
C.M.P. Nos. 11699 & 11700 of 2017

National Insurance Company Limited,
No. 37/2E, Salem Main Road,
Mettur Dam R.S.P.G. No. 19,
Mettur Dam, Salem District - 636 402. ...Appellant in Both CMAs/2nd respondent

Vs

1. Latha

2. Sekar

3. P.Velu

...Respondents/Respondents 1 & 3/ Respondents in Both CMAs

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.A.C.T. O.P. Nos. 906 & 907 of 2010 dated 28.03.2014 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Court, Salem.

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|---|---|---|
| For Appellant | : | Ms. N.B. Surekha |
| For Respondents | : | Mr. S.P. Yuaraj for R1<br><br>R2 Served No Appearance<br>R3 Dispensed with |

COMMON JUDGMENT

These appeals have been filed by the Insurance Company challenging the common award dated 28.03.2014 passed by the

Motor Accident Claims Tribunal, Salem in M.C.O.P. Nos. 906 & 907 of 2010.



2. Heard Ms. N.B. Surekha, learned counsel for the Appellant and Mr. S.P. Yuaraj, learned counsel for the 1st respondent.

3. The Appellant Insurance Company has challenged the impugned award questioning its liability to pay the compensation on the ground that the respective deceased were gratuitous passengers in a goods vehicle (Insured Vehicle).

4. Admittedly, the deceased who were minors aged four years and two years respectively, were travelling in the insured vehicle which is a Minidor Auto (Insured Vehicle). The aforementioned facts were not disputed by the claimants before the Tribunal.

5. It is settled law that if the accident victims were travelling in a goods vehicle and they were gratuitous passengers, the insurance company is not liable to pay the compensation. However the Tribunal under the impugned award has erroneously failed to appreciate the evidence available on record which would clearly lead to the conclusion that the Appellant Insurance Company is not liable to pay the compensation. Admittedly, insured vehicle had only one seating capacity as per the registration certificate which has been marked as Ex. R9 before the Tribunal. The Insurance policy marked as Ex.R3 before the Tribunal also gives insurance coverage only for one person. The Tribunal has failed to take into consideration the aforementioned admitted facts and has erroneously directed the Appellant to pay the compensation.

6. For the foregoing reasons, the impugned common award has to be necessarily set aside by this Court. Accordingly, the impugned common award dated 28.03.2014 passed by the Motor Accident Claims Tribunal, Salem in M.C.O.P. Nos. 906 & 907 of 2010 are hereby set aside and the Appeal is allowed. No Costs. Consequently, connected Civil Miscellaneous Petitioners are closed.

7. It is represented by the learned counsel for the Appellant Insurance Company that the Appellant Insurance Company has already deposited the award amount before the Tribunal.

Since the Appellant has deposited the award amount before the Tribunal, the Appellant Insurance Company is permitted to withdraw the amount deposited by them, by filing an appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ab/nl

To

1. The Motor Accidents Claims Tribunal,
   2nd Additional District Court,
   Salem.

Copy to:

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

+2ccs to M/s.N.B.Surekha, Advocate, S.R.No.54323 & 54324

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.54343

C.M.A.Nos.3259 & 3260 of 2014
and
M.P.Nos.1 & 1 of 2014
and
C.M.P. Nos. 11699 & 11700 of 2017

PP(CO)
SU(23/11/2021)