IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.454 OF 2014
AND
M.P.NO.1 OF 2014

M/s.National Insurance Co. Ltd.,
Having its Branch Office at
City Branch - III, 1152/1153, Trichy Road,
Coimbatore.
Rep. by its, Branch Manager
.. Appellant/3rd Respondent

..Vs..

1. Yasoda ... 1st Respondent/1st Petitioner

2. Vincent @ Alphons ... 2nd Respondent/2nd Petitioner

3. J.Jahir Hussain ... 3rd Respondent/1st Respondent

4. S.Sadhik Basha ... 4th Respondent/2nd Respondent

5. R.Mohana Krishnan ... 5th Respondent/4th Respondent

6. L.Sathish ... 6th Respondent/5th Respondent

7. National Insurance Co. Ltd.,
Having its Branch Office at
Kumaran Illam, Green Fields
Ooty - 643 001.
(Respondents 3 to 6 are
Set exparte in Lower Court)
... 7th Respondent/
6th Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2013 in M.C.O.P.No.756 of 2005 on the file of the Motor Accident Claims Tribunal, First Additional District Judge, Erode.

For Appellant :: Mrs.R.Sreevidhya

For Respondents :: Not ready in notice - R1 to R6
Mr.K.Padmanabhan for R7

JUDGMENT

This appeal has been laid as against the judgment and decree dated 28.01.2013 made in M.C.O.P.No.756 of 2005 on the file of the Motor Accident Claims Tribunal, First Additional District Judge, Erode, thereby awarded the compensation to the tune of Rs.6,00,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that the deceased was travelling in a goods vehicle from Coonoor to Mettupalayam. Between 8th and 9th hairpin bends, near a milestone, which indicated as 76 Km., to Gudalur, the driver of the said van had driven in a rash and negligent manner and dashed against the lorry coming in the opposite direction, which was driven by the fourth respondent insured with the sixth respondent. Due to the said accident, the deceased sustained multiple grievous injuries and immediately he was taken to Government Hospital, Conoor wherein after getting first aid and he was shifted to Coimbatore Government Hospital. He was treated as inpatient for 21 days and again shifted to Ganga Hospital, Coimbatore and then he was admitted to Samuel Hospital, Coonoor. But the injured succumbed to the injuries on 02.02.2005. Hence, the claim petition.

4. Resisting the claim, the third respondent filed counter stating that the deceased had travelled as a passenger in a goods carrying vehicle. The permit issued to the van does not permit passengers to be carried in the van. Therefore, in violation of permit and policy conditions, the deceased and others were carried as passengers in the van. The vehicle owned by the second respondent committed the violation of permit and policy condition and the third respondent is not liable to pay compensation as claimed by the claimant.

5. On the side of the claimants, they examined P.W.1 and P.W.5 and marked Ex.P.1 to Ex.P.16. On the side of the third respondent no one was examined as their witness and only Ex.R.1 was marked. On the basis of the evidence available on record and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened the liability on

the third respondent and awarded a sum of Rs.6,00,000/- as compensation at the rate of 7.5% interest per annum. Aggrieved by the same, the third respondent/Insurance Company has come forward with the present appeal questioning the liability.

6. The learned counsel appearing for the appellant would submit that the deceased was a non-fare paying passenger and travelled along with other passengers in the goods vehicle owned by the second respondent which was insured with the third respondent. Therefore, the third respondent is not liable to pay any compensation as claimed by the claimants. That apart, though the Tribunal awarded compensation payable by the third respondent, in the decree stated that the claim petition was dismissed as against respondents 3 to 6. The learned counsel submitted that there is a clear violation of policy conditions and argued that the claimants are not entitled for any compensation.

7. Heard Mrs.R.Sreevidhya, learned counsel appearing for the Insurance Company/appellant and Mr.K.Padmanabhan, learned counsel appearing for the respondent/Insurance Company.

8. The claimants are the legal heirs of the deceased. The deceased travelled in a goods van on 20.01.2005 and met with an accident because of rash and negligent driving of the driver of the van owned by the second respondent insured with the third respondent. On the complaint lodged by the opposite vehicle, the FIR was registered as against the driver of the van in which the deceased had travelled and he was also charge sheeted. The only point raised by the third respondent is that the deceased had travelled in a goods vehicle and as such, the second respondent violated the policy condition by allowing passengers to travel in a goods vehicle.

9. A perusal of the Insurance policy issued by the third respondent reveals that a sum of Rs.75,000/- was paid towards non-fare paying passengers for 1%. Except the legal heirs of the deceased who are the claimants, no one has claimed under the head of non-fare paying passengers in the goods vehicle. Therefore, the policy covers the deceased to travel as a non-fare paying passengers and as such the third respondent is liable to pay compensation. The Tribunal rightly awarded the compensation and this Court finds no merits in this case.

10. It is seen that, in the judgment though the Court below directed the third and sixth respondents in the claim petition viz., the appellant and the seventh respondent herein to deposit the award amount and in the last paragraph of the decree, it is mentioned as “the claim petition is dismissed as against the respondents 3 to 6”. It is also seen that the respondents 1, 2,

4 & 5 in the claim petition viz., the respondents 3 to 6 herein are set exparte. Therefore, it is made clear that the third respondent viz., the appellant herein alone is liable to pay compensation and the claim petition is dismissed as against sixth respondent viz., the seventh respondent herein.

11. Accordingly, the appellant/Insurance Company is directed to deposit the total compensation of Rs.6,00,000/- with accrued interest and costs as determined at by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the respondents 1 to 2/claimants are permitted to withdraw in accordance with law, less the amount if any already withdrawn by them.

12. In the result, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   First Additional District Judge, Erode.

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

+1cc to Mrs.R.Sreevidhya , Advocate, S.R.No.24645

C.M.A.No.454 of 2014
and M.P.No.1 of 2014

JP-II(CO)
CS/23/09/2021