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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.4244 of 2019
and C.M.P.No.24001 of 2019

The Divisional Manager,
The New India Assurance Co. Ltd.,
Office at 133/31-A, Trichy Main Road,
Sethu Ramakrishna Traders,
2nd Floor, Prabath Theatre Bus Stop,
Gugai, Salem 636 006. .. Appellant/2nd Respondent

Vs.

1.Selvi

2.Manickam

3.Murali ...Respondents 1 to 3/Petitioners

4.K.Parasuraman ..4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2019, made in M.C.O.P. No.401 of 2017, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Salem.

For Appellant : M/s.A.Salomi
for M/s.C.Ramesh Babu

For Respondents: No appearance (For R1 to R3)

No appearance (For R4)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 12.04.2019, made in M.C.O.P. No.401 of 2017, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Salem.



2.The appellant is the 2nd respondent in M.C.O.P. No.401 of 2017, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Salem. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 23.12.2011.

3.According to the respondents 1 to 3, on the date of accident, the deceased Ganesan along with other loadmen loaded kilangu thippi in the Tractor bearing Registration No.TN-30-AH-6712 belonging to the 4th respondent, at S.P.Kilangu Mill, Annadhanapatti, and was sitting in the side of the Tractor, to unload the goods. When the Tractor was nearing Kondalampatty Lakshmi Petrol Bunk, the driver of the said vehicle drove the same in a rash and negligent manner, due to which the deceased Ganesan fell down from the Tractor and sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Tractor belonging to the 4th respondent. Hence, the respondents 1 to 3 filed the claim petition claiming compensation against the 4th respondent as owner and appellant as insurer of the offending vehicle.

4.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition. According to the appellant, the driver of the Tractor drove the same in a slow and cautious manner near Lakshmi Petrol Bunk, from Kondalampatty Roundana to Kondalampatty and there was no fault on the part of the driver. It was because of the said deceased Ganesan's own risk and negligence, the accident has occurred. As per Registration Certificate, the seating capacity of the Tractor is only one i.e., for the driver and no other persons except driver is supposed to travel in the Tractor. The deceased voluntarily contributed to the accident by unauthorizedly traveling in the Tractor as gratuitous passenger, in violation of Registration Certificate and hence, for violation of policy conditions, the appellant is not liable to indemnify the 4th respondent. The respondents 1 to 3 have to prove that the driver of the 4th respondent possessed valid driving license to ply the vehicle at the time of accident. In any event, the total compensation awarded by the Tribunal is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye witness as P.W.2 and marked 9 documents as Exs.P1 to P9. The appellant examined Junior Assistant from R.T.O, Salem South as R.W.1, official of the appellant as R.W.2 and marked 4 documents as Exs.R1 to R4.



6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Tractor belonging to the 1st respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.9,10,0000/- as compensation to the respondents 1 to 3 at the first instance and recover the same from the 4th respondent.

7.To set aside the award dated 12.04.2019, made in M.C.O.P. No.401 of 2017, the appellant - Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant-Insurance Company contended that the deceased traveled in the Tractor sitting on the mudguard as unauthorized passenger. The 4th respondent permitted the deceased to travel in the Tractor and violated policy conditions. Hence, the appellant is not liable to indemnify the 4th respondent for such violation. Further, the driver of the Tractor did not possess driving license at the time of accident. The appellant examined R.W.1 and R.W.2 and proved that 4th respondent violated policy conditions. The Tribunal failed to consider the oral and documentary evidence let in by the appellant and erroneously ordered pay and recovery when the appellant is not liable to pay compensation. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9.Though notice has been served on the respondents 1 to 3 and their names are printed in the cause list, there is no representation for them. Mr.R.Ezhilarasan filed vakalat and the same was returned for not obtaining consent from the previous counsel.

10.Though the 4th respondent entered appearance through counsel and his name is printed in the cause list, there is no representation for him.

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

12.It is the case of the respondents 1 to 3 that the deceased was a loadmen. After loading goods in the Tractor, the deceased and other loadmen were sitting over the goods. The deceased was sitting on the side of the driver as there was no place to sit along with other loadmen, to unload the goods. Due to the rash and negligent driving by driver of the Tractor, the deceased fell down from the Tractor and sustained fatal injuries. To prove the said contention, the 1st respondent examined herself as P.W.1 and one Madhu, eye-witness was



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examined as P.W.2. On the other hand, it is the case of the appellant that the deceased traveled as unauthorized passenger in the Tractor, as seating capacity of the Tractor is only for the driver. The driver of the Tractor did not possess driving license at the time of accident. The appellant examined the Junior Assistant from the Regional Transport Office, Salem South as R.W.1 and official of the appellant as R.W.2 and filed policy to prove their case. The Tribunal considering the materials placed before it and the judgments relied on by the learned counsel appearing for the respondents 1 to 3 and appellant, held that the appellant is liable to pay compensation and granted liberty to recover the same from the 4th respondent, owner of the Tractor. From the materials on record, it is seen that admittedly, the deceased traveled sitting in the mudguard of the Tractor. In the Tractor, no other person than driver can travel. Hence, the deceased traveled only as unauthorized passenger in the Tractor. It is well settled that Insurance Company is not liable to pay compensation for the claim for injuries or death of unauthorized passengers. When the Insurance Company is not liable to pay compensation, the award of the Tribunal holding that the appellant is liable to pay compensation with liberty to reimburse the amounts paid to the respondents 1 to 3 from the 4th respondent is erroneous. The said erroneous award is liable to be set aside and is hereby set aside.

13. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. It is represented by the learned counsel appearing for the appellant that as per the order of this Court dated 11.11.2019, they have already deposited 50% of award amount to the credit of M.C.O.P.No.401 of 2017. In view of allowing the appeal, the appellant-Insurance Company is permitted to withdraw the amount, lying in the credit of M.C.O.P. No.401 of 2017, if the award amount has already been deposited by them. It is made clear that if the respondents 1 to 3 have already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 to 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa



To

1.The II Additional District Judge,
(Motor Accident Claims Tribunal),
Salem.

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

+lcc to Mr.C.Ramesh Babu, Advocate, S.R.No.8719

C.M.A. No.4244 of 2019

RSI (CO)
CB(08/09/2021)