



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1819 of 2017
and
C.M.P.No.9738 of 2017
[video conferencing]

United India Insurance Company Ltd.,
Arcot Road, Chennai - 93 ...Appellant/2nd respondent

Vs.

1.Rajeswari ...1st respondent/petitioner

2.M.Uma Maheswari ...2nd respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree of II Additional District Judge, Poonamallee in M.C.O.P.No.326 of 2015 dated 22.12.2016.

For Appellant : Mrs.Vijaya Kamala
For R1 : Mr.C.Prabakaran
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award passed in M.C.O.P.No.326 of 2015 dated 22.12.2016 on the file of the Motor Accidents Claims Tribunal cum II Additional District Judge, Poonamallee.

2.The short facts which are leading to the filing of the present Civil Miscellaneous Appeal are as follows:

The 1st respondent is the claimant and the 2nd respondent herein is the owner of the vehicle and the appellant herein is the 2nd respondent before the Tribunal. On 02.08.2015 at about 11.00 p.m., the deceased was driving a motorcycle bearing Registration No.TN 20 AP 2981 from Chennai towards Vandavasi at Uthiramerur Junction while he was going near Ozhaiyur Road, the



driver of the Tata City Rider Van bearing Registration No.TN 25 AZ 9054, belonging to the 1st respondent drove the vehicle in a rash and negligent manner and hit behind the two wheeler and caused the accident. In the accident, the deceased Sukumar @ Sukumaran sustained multiple grievous injuries and he succumbed to the injuries at Rajiv Gandhi Government General Hospital on 03.08.2015.

3.Before the Tribunal, examined two witnesses as P.W.1 and P.W.2 and Ex.P1 to Ex.P12 were marked. On the side of the respondents witness R.W.1 was examined and Ex.R1 to Ex.R3 were marked.

4.The appellant herein is the insurer of the vehicle namely Tata City Rider Van owned by the 2nd respondent herein. The claimant / widowed mother of the deceased has filed a claim petition claiming a sum of Rs.10,03,000/- [Rupees Ten Lakhs Three Thousand only] as compensation in M.C.O.P.No.326 of 2015 dated 22.12.2016 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Poonamallee.

5.The Tribunal after considering the evidence on record awarded a total compensation of Rs.10,44,500/- payable to the claimant/widowed mother of the deceased, directing the appellant to pay the awarded amount with interest therein at the rate of 9% per annum from the date of filing of the petition till the date of realization with costs.

6.This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company, challenging the Judgment and Decree passed in M.C.O.P.No.326 of 2015, dated 22.12.2016 passed by the Motor Accident Claims Tribunal cum II Additional District Judge, Poonamallee.

7.According to the appellant, the Insurance Company /2nd respondent the insurer of the vehicle via Tata City Rider Van bearing Registration No. TN 25 AZ 9054. The learned counsel contended that even though evidence was adduced through R.W.1 that at the time of accident the van carried 15 passengers as against the capacity of 13 passengers which resulted in the alleged accident, the Tribunal failed to appreciate the evidence that the 2nd respondent Tata City Rider Van was over loaded with the passengers.

8.The learned counsel would further submit that when it is proved through the evidence of R.W.1 and Exs.R1 to R3 that the insured violated the terms and conditions of the policy, the Tribunal ought to have passed an order for pay and recovery.

9.The Trial Court considering the rash and negligent act of



the driver of the Tata City Rider Van at the time of accident held that the accident has happened due to the rash and negligent act of the driver of the 1st respondent vehicle.

10.The Trial Court has also at Para No.9 of the Judgment clearly discussed about the evidence of R.W.1 and Exs.R1 to R3 has rightly held that because of the excess of two passengers there would not have been any possibility for the accident and the accident had happened only due to the rash and negligent driving of the driver of the Tata City Rider Van and this Court does not find any wrong in the finding of the Trial Court and no interference is called for.

11.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge,
Poonamallee.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.57351

C.M.A.No.1819 of 2017

PVS (CO)
RGA(02/06/2022)