



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2021

Pronounced on : 11.02.2021

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.279 of 2017

The National Insurance Company Limited,
Divisional Manager - II,
Ramakrishna Road,
Salem - 636 007.

... Appellant /2nd Respondent

/versus/

1. Thiruppathi,
S/o.Andiyappan.

2. Minor Manikandan,
S/o.Thiruppathi.

3. Minor Ajith Kumar,
S/o.Thiruppathi.

4. Minor Swathi,
S/o.Thiruppathi.

(2nd, 3rd & 4th Minor Petitioner Guardian 1st Respondent father
Thiruppathi)

All are residing at,
Old No.5/34A, New No.4/56B,
Urandidavalasu Main Road,
Arasanatham,
Attur Taluk, Salem District - 636 107.

...Respondents 1 to 4/Petitioners 1 to 4

5. Rajamani,
W/o.Natarajan,
No.600/38, Lakshmipuram 2nd Street,
Attur Town & Post,
Salem District - 636 007.

..5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.1173 of 2011 on 24.06.2016 on the file of the Learned Motor Accident Claims Tribunal (Special District Judge), Salem District.



For Appellant : Mr.J.Chandran

For Respondents:Mr.S.P.Yuvaraj

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J U D G M E N T

This Appeal is filed by the Insurance Company. The award passed by the Tribunal in M.C.O.P.No.1173 of 2011 is under challenge in this appeal.

2. The facts of the case is that, on 08.05.2011 at about 18.00 hours the deceased Parimala along with a minor boy Manikandan and her relative by name Rani was travelling in a mini door Auto bearing registration No.TN-34-D-4618 along with groceries for her shop. The said mini door auto got capsized when an unknown Tempo coming from opposite direction and hit the mini door auto. The said Parimala was taken to Government Hospital, Attur and later shifted to Poly Clinic Hospital, Salem. The duty doctor examined her and reported dead on the way to hospital. Her husband and three minor children of Parimala has filed claim petition seeking compensation for a sum of Rs.20,00,000/- against the owner of the mini door auto and his insurer.

3. The Tribunal, after examining the witnesses awarded a sum of Rs.8,05,130/- at the rate of 7.5% interest from the date of petition till the date of realisation.

4. In the appeal, the Insurance Company had stated that regarding the road accident, F.I.R under Sections 279 & 337 of I.P.C was registered on 05.05.2011 stating that, the mini door auto bearing registration No.TN-34-D-4618 loaded with groceries met with an accident when an unknown Tempo hit and ran away. Without intimation to the police, 1st claimant Thirupathi and others cremation body of Parimala. For which, separate F.I.R registered by Malliakarai Police Station under Section 176 of I.P.C in Crime No.315 of 2011. The Tribunal failed to consider the inconsistency and contradiction found in oral and documentary evidence regarding the accident and the death of Parimala. The Tribunal erred in holding the Insurance Company responsible to pay compensation ignoring the fact that the deceased Parimala was travelling in a goods vehicle as a gratuitous passengers in violation of terms and conditions of policy. The mini door auto was insured under Act only Policy. Any negligence on the part of the vehicle driver need not be indemnified by the Insurance Company under the Act only Policy. Any passenger travelling as a gratuitous passenger in the goods carrier, not entitled to get compensation from the insurer of



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the vehicle. The award of Rs.8,05,130/- passed by the Tribunal is highly exorbitant and contrary to the precedent of the Hon'ble High Court and Supreme Court on fixation of compensation.

5. Point for consideration:-

Whether the award amount is excessive and whether the order of pay and recovery against the appellant/Insurance Company is sustainable?

6.The learned counsel appearing for the appellant/Insurance Company would submit that having held that the deceased Parimala was a gratuitous passenger travelling in a goods vehicle. The Insurance Company should have been totally exonerated the claim. The Application for pay and recovery principle will not apply to the fact of the case in view of the Division Bench judgment rendered in Bharati Axa General Insurance Company Limited vs. Aandi and others reported in (2018) 2 TN MAC 731 (DB).

7. The learned counsel appearing for the respondent submitted that the deceased Parimala was the owner of the goods and entitled to travel in a goods vehicle as owner of the goods. Therefore, the Insurance Company cannot be exonerated from indemnifying the vehicle owner after collected premium.

8. Further, the Learned Counsel appearing for the respondent brought to the notice of this Court that in the connected C.M.A.No.278 of 2017 filed by minor Manikandan through her mother Rani, this Court, has upheld the award of pay and recovery. Since the claimants have proved that the deceased was travelling along with the goods as a owner of the goods, the award of the Tribunal may be confirmed.

9. In Bharati Axa General Insurance Company Limited vs. Aandi and others reported in (2018) 2 TN MAC 731 (DB), the Division Bench of this Court has held that the Insurance Company is not liable to pay gratuitous passenger. However, there are judgments where the gratuitous passengers who are travelling in the goods vehicle along with the goods were awarded compensation with direction the Insurance Company to pay and recover from the insured.

10. In this case, the First Information Report given by Rani indicates that she, the deceased Parimala along with the minor boy Manikandan were travelling in the goods vehicle carrying groceries. The Insurance Policy which is marked as Ex.R.1 indicate that the Insurance Company has collected premium only for third party claim and additional sum of Rs.25/- collected for Workmen's Compensation to the employee. The



deceased Parimala is not an employee under the vehicle owner. Therefore, there is no coverage for the gratuitous passenger travelling in the goods vehicle. But then, this Court is not inclined to interfere with the award of the Tribunal ordering pay and recovery in view of the fact that the pay and recovery order passed by the Tribunal in respect of other victim minor Manikandan is confirmed and upheld by the other bench of this Court of coordinate strength.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To

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

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

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.7968
+1cc to Mr.J.Chandran, Advocate, S.R.No.8072

C.M.A.No.279 of 2017

GMR (CO)
CB(21/10/2021)