



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A. (MD) No.1347 of 2011

and

M.P. (MD) No.3 of 2011

The Branch Manager,
National Insurance Company Limited,
Rajapalayam Town,
Virudhunagar District.

... Appellant /2nd respondent

-vs-

Parvathi (Died)
1.Muneeswari
2.K.J.Sriengaperumal Raja

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 28.07.2010 made in M.C.O.P.No.108 of 2004, on the file of the Motor Accident Claims Tribunal (Sub Court), Srivilliputtur.

For Appellant : Mr.D.Sivaraman
For 1st Respondent : Mr.M.Ashok Kumar
For 2nd Respondent : Mr.PT.S.Narendravasan

J U D G M E N T

In this appeal, the appellant/Insurance Company challenges the award of the Motor Accident Claims Tribunal, Sub Court, Srivilliputtur, dated 28.07.2010, passed in M.C.O.P. No.108 of 2004.

2. The brief facts of the case are that, the deceased one Nainar, was a driver of a stage carriage bearing registration No.TN-67-Z-4665, running between Aruppukkottai and Rajapalayam. On 25.05.1992, both the driver and conductor of the bus permitted some passengers to carry unlicensed explosives in the bus. Unfortunately, it got fired and more than 30 persons died including the driver of the bus. Hence, claiming compensation of Rs.3,00,000/- the claim petition was filed by his legal heirs.

3.The Insurance Company contested the claim petition on the ground that the accident took place due to the negligent act of both driver and conductor. They illegally permitted some of the passengers to carry unlicensed explosives in the bus, against the



policy conditions, due to which, the accident has taken place. That apart, for that, the claimants cannot seek compensation under Motor Vehicles Act, 1988, and they can only claim compensation under the Workmen's Compensation Act, 1923.

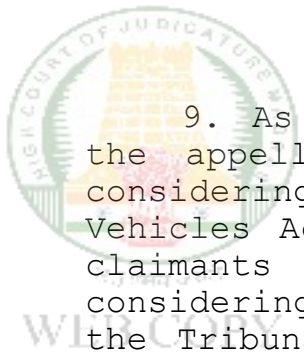
4. During trial, before the Tribunal, on behalf of the claimants, two witnesses were examined and 2 documents were marked. No oral and documentary evidence was adduced on behalf of the respondents in the claim petition. After analysing the evidence, the Tribunal has held that the accident occurred due to Act of God, and since the driver was working under the 2nd respondent herein and the 2nd respondent insured the vehicle with the appellant Insurance Company, directed the insurance company to pay compensation to the claimant.

5. So far as the quantum of compensation is concerned, the Tribunal has fixed the monthly income of the deceased at Rs.1,350/- per month and after deducting 1/3rd towards his personal expenses, calculated annual income of the deceased at Rs.10,800/- and by applying multiplier '11', awarded Rs.1,18,800/- as loss of income. In addition, the Tribunal has awarded Rs.10,000/- towards loss of love and affection, Rs.3,000/- towards funeral expenses and Rs.1,000/- towards transport expenses and awarded total compensation of Rs.1,32,800/- along with interest at the rate of 7.5% per annum. Questioning the same, the present appeal has been filed by the Insurance Company.

6. Mr.D.Sivaraman, learned counsel appearing for the appellant / Insurance Company would contend that, the accident had happened only due to the negligent act of the (driver) deceased and the conductor, who permitted the passengers to carry explosive substances in the bus, which ultimately resulted in the accident, in which, about 30 persons have died. The deceased in this case being the driver of the bus, the claimants cannot maintain the claim under the Motor Vehicles Act and their remedy is available before the Workmen's Compensation Act. However, the Tribunal wrongly awarded compensation under Motor Vehicles Act. Hence, the award of the Tribunal is liable to be set aside.

7. Per contra, Mr.M.Ashok Kumar, learned counsel appearing for the first respondent/claimant would submit that the deceased was a driver, and he has no occasion to see that any passenger carrying explosive substances in the bus. Hence, there was no negligence on the part of the deceased driver. Considering those circumstances, the Tribunal only awarded a meagre sum of Rs.1,32,800/- to the first respondent/second claimant and that need not be interfered with.

8. We have considered the submissions of the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.



9. As rightly contended by the learned counsel appearing for the appellant, the deceased being the driver of the bus, and considering the nature of accident, claim petition under Motor Vehicles Act is not maintainable, and the remedy available to the claimants is only under Workmen's Compensation Act. However, considering the fact that the claim was made in the year 2004, and the Tribunal awarded only a meagre compensation of Rs.1,32,800/-, and also considering the fact that all the other claims were processed and the insurance company already paid the compensation to other claimants, at this distant point of time, the claimants need not be driven to file a fresh claim under the Workmen's Compensation Act. In such circumstances, this Court converts the claim as one made under Workmen's Compensation Act. Considering the fact and circumstances of the case, and the compensation awarded by the Tribunal is just and fair compensation, this Court inclined to confirm the award amount of Rs.1,32,800/-.

10. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award of the Motor Accident Claims Tribunal (Sub Court), Srivilliputtur, dated 28.07.2010, made in M.C.O.P.No.108 of 2004. As the award amount has already been deposited by the Insurance Company, the claimant is permitted to withdraw the entire award amount along with accrued interests and costs by filing appropriate application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

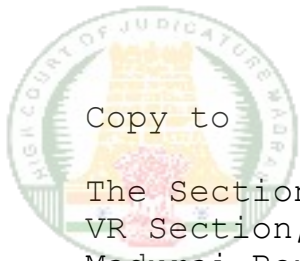
sj

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Motor Accident Claims Tribunal (Sub Court),
Srivilliputtur.



Copy to

The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-31905[F] dated 11/10/2021)

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-31869[F] dated
08/10/2021)

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NA (CO)

KB (11.11.2021) 4P 6C