



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.12.2020

PRONOUNCED ON : 22.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.576 of 2011

and

MP (MD) No.1 of 2011

WEB COPY

M/s.The New India Assurance Company Limited,
Divisional Office,
Jerome Building, II Floor,
Fort Station Road,
Trichy - 620 002.

: Appellant /2nd Respondent

Vs.

1.S.Senthilkumar
2.Minor S.Nalini
3.Minor S.Suriya
4.Minor S.Sundar

: Respondents 1 to 4/Petitioners

(The respondents 2, 3 & 4 are represented by their father
and natural guardian, the first respondent herein)

5.S.Govindaraj

: 5th Respondent/1st Respondent

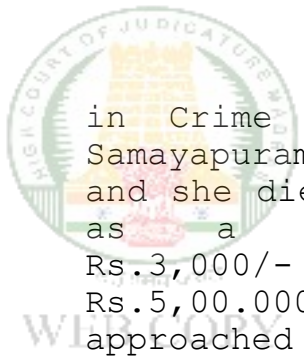
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, in M.C.O.P.No.1324 of 2006, dated 08.10,2010, on the file of the Motor Accidents Claims Tribunal/Second Additional Subordinate Court, Tiruchirappalli.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: No Appearance
For R5	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, in M.C.O.P.No.1324 of 2006, dated 08.10,2010, on the file of the Motor Accidents Claims Tribunal, Second Additional Subordinate Court, Tiruchirappalli.

2.The case of the petitioners/claimants before the Tribunal is that on 20.05.2005, at about 02.00 p.m., the deceased was returning in a TATA 407 Van bearing Registration No.TN-32-Y-0726 from Trichy to her native place, after purchasing vegetables from Gandhi Market. The first respondent is the owner of the vehicle. The driver of the vehicle drove the same in a rash and negligent manner. As a result of which, the vehicle capsized. In respect of the occurrence, a case



in Crime No.314 of 2005 was registered on the file of the Samayapuram Police Station, Trichy. The deceased suffered injuries and she died. At the time of the accident, the deceased was working as a vegetable vendor and earning a sum of Rs.3,000/- per month. So, claiming compensation amount of Rs.5,00,000/- (Rupees Five Lakhs Only), the petitioners/claimants, approached the Tribunal.

3.The case of the appellant/2nd respondent before the Tribunal is that the deceased along with others, hired the vehicle for travelling, to attend the marriage. So, the deceased did not travel in the vehicle as the owner of the goods. So, the Insurance Company is not liable to pay any compensation, since there is a breach of Policy Condition as well as the Motor Vehicle Rule.

4.Before the Tribunal, on the side of the petitioners/claimants, one witness was examined and three documents marked. On the side of the respondents, three witnesses were examined and four documents marked.

5.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver.

6.Regarding the compensation, it fixed the same at Rs.4,00,000/- (Rupees Four Lakhs Only) and directed the appellant to pay the amount and recover the same from the first respondent. So, challenging the same, the appeal has been preferred by the Insurance Company mainly on the ground that there was no policy as well as there is violation of Motor Vehicle Rules. The Insurance Company ought not have been directed to pay the amount and recover the same from the insured. Even though, the quantum is also objected to in the grounds of appeal, during the argument, the Insurance Company has confined its argument only with regard to its liability.

7.As mentioned in the petition, it is the case of the claimants that the deceased travelled in the goods vehicle as the owner of the goods, there is vegetable, which has been purchased by the deceased in the Gandhi Market, Trichy. According to P.W.1, they purchased the vegetables in the Gandhi Market and loaded the same in the offending vehicle. Along with the load, they went to the marriage function and returned to the village, at that time, the accident took place. So, what P.W.1 tried to say is that they travelled only as the owners of the vegetables. So, according to them, there is no violation. During cross examination, it is admitted that inspite of his objection, some 39 persons travelled in the vehicle. There is no evidence on record to show that they hired the vehicle for transporting the vegetables.



8.Ex.P.1 is the First Information Report, registered on the basis of the complaint given by one of the travellers in the vehicle. It is stated that when they were returning from the marriage function in the vehicle, at that time, the vehicle was capsized. According to him, some 35 people travelled in the vehicle. So, the reading of the First Information Report shows that the marriage party had hired the vehicle for transporting the invitees to the marriage function. So, the contention, on the part of the petitioners/claimants that they hired the vehicle for transporting the vegetables cannot be accepted and as mentioned earlier, without any evidence, even if we take that they hired the vehicle for transporting the vegetables, they cannot be permitted to travel in the cargo area. There is no evidence to show that the deceased was travelling in the cabin area. But, on the contrary, it is seen that totally 35 people travelled in the vehicle, which is against the policy condition as well as the Motor Vehicle Rule. So, the Insurance Company cannot be fastened with the liability and moreover, it has been more or less, well settled that the Insurance Company is not even liable to pay compensation to the gratuitous passenger in a goods vehicle. So, that portion of the order of the Tribunal, directing the Insurance Company, to pay compensation and then recover the same from the insured, is required to be set aside and accordingly set aside.

9.Regarding the compensation, the appellant/ Insurance Company did not make any argument, since it has been absolved from its liability. So, the quantum fixed by the Tribunal is confirmed.

10.In the result, the appeal is partly allowed and the quantum fixed by the Tribunal is confirmed. The order of the Tribunal, directing the appellant to pay the amount on behalf of the 5th respondent (first respondent before the Tribunal) is set aside and the 5th respondent is directed to pay the entire award amount with 7.5 % interest per annum and costs within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their entire share in the accrued amount as apportioned by the Tribunal, except the minors. If the minors have attained majority, they are also permitted to withdraw their share in the award amount. No costs. Consequently, connected miscellaneous petition is closed.

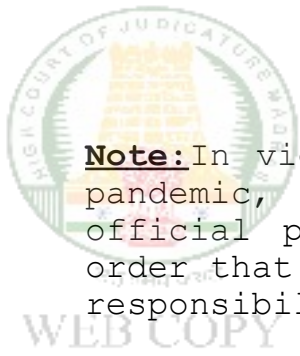
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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

1.The Motor Accidents Claims Tribunal,
Second Additional Subordinate Court,
Tiruchirappalli.

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.S.MURALI, Advocate (SR-1985[F] dated 25/01/2021)

**C.M.A. (MD) .No.576 of 2011
and
MP (MD) No.1 of 2011
22.01.2021**

VB (17.02.2021) 4P 5C