



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A. (MD) No.659 of 2010

and

M.P. (MD) No.3 of 2010

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The Branch Manager
National Insurance Company Limited
Post Box No.112, North Car Street
Nagercoil, Nagercoil Village
Agasteeswaram Taluk
Kanyakumari District

... Appellant/3rd Respondent

-vs-

1. Inbhadhass
2. Minor. I. Subramonian ... Respondents 1 & 2 / Petitioners 1 & 2
(Minor is represented through his father
and natural guardian 1st respondent herein)
3. T. Kolappan
4. N. Vimala Bai ... Respondent 3 & 4 / Respondent 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 20.06.2007 in M.C.O.P.No.179 of 2004, on the file of the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil.

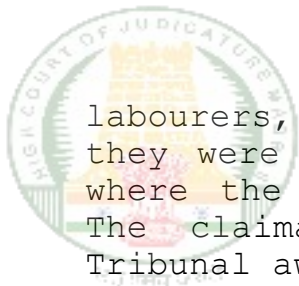
For Appellant : Mr. D. Sivaraman

For Respondents : Mr. Muthuvel
for M/s. Issac Chambers for R1 & R2
No appearance for R3 & R4

J U D G M E N T

The direction issued by the Motor Accident Claims Tribunal, Nagercoil, vide Award dated 20.06.2007 in M.C.O.P.No.179 of 2004, to the Insurance Company to satisfy the award amount and recover it from the owner of the offending vehicle is under challenge in this civil miscellaneous appeal.

2. The respondents 1 and 2 are the husband and son of the deceased Perinbam. On 30.11.2003, the deceased Perinbam was travelling in a Tempo Van bearing registration No. TN74 B6177 along with eleven others as Coolie workers for the planting of paddy seedling. It is their case that the driver of the Tempo Van drove the vehicle in a rash and negligent manner and lost its control, due to which the Van got capzied. In the accident, all the



labourers, including the deceased Perinbam, sustained injuries and they were taken to Kottar Medical College Hospital for treatment, where the Doctor declared the deceased Perinbam as brought dead. The claimants claimed compensation of Rs.13,80,000/-, but the Tribunal awarded a sum of Rs.2,83,500/-.

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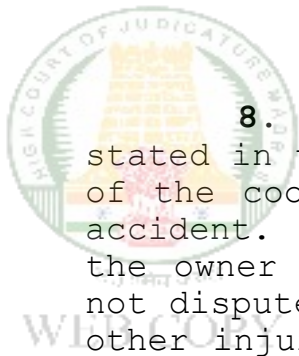
3. The appellant - Insurance Company resisted the claim petition disputing the manner of accident and their liability to pay the award amount. According to the appellant - Insurance Company, the deceased and the injured were gratuitous passengers in a goods vehicle at the time of accident and hence, no liability can be fixed on them.

4. On behalf of the claimants, two witnesses were examined and seven documents were marked and on behalf of the Insurance Company, two witnesses were examined three documents were marked. The Tribunal, after analyzing the evidence both oral and document, came to the conclusion that the driver of the offending vehicle was responsible for the accident and since policy conditions have been violated, a direction was issued to the appellant - Insurance Company to pay the award amount at the first instance and recover it from the owner of the offending vehicle. Challenging the said direction, the present civil miscellaneous appeal has been filed.

5. Mr.D.Sivaraman, learned counsel appearing for the appellant - Insurance Company, would submit that the Tribunal misdirected itself in law while mulcting the Insurance Company to pay the award amount to the claimants. It is also submitted that the persons travelled in the Van were neither owner nor representative of the owner of the goods and they were also not engaged by the insured and hence, the direction issued by the Tribunal is liable to be set aside. In this regard, the learned counsel relied upon a decision of this Court in **Bharati AXA General Insurance Co. Ltd. v. Aandi [2018 (2) TN MAC 731 (DB)]** .

6. Per contra, Mr.Muthuvel, learned counsel appearing for the respondents 1 and 2 / claimants, would submit that the deceased was a representative of the owner of the goods and hence, under Section 147 of the Motor Vehicles Act, 1988, the Insurance Company is liable to pay compensation to the claimants. It is also contended that the appellant - Insurance Company had failed to prove the violation of policy conditions and hence, there is no need to interfere with the findings of the Tribunal. In support of the said contention, the learned counsel relied upon the decision of the Apex Court in **Lakhmi Chand vs. Reliance General Insurance [(2016) 3 SCC 100]**.

7. Heard Mr.D.Sivaraman, learned counsel appearing for the appellant and Mr.Muthuvel, learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.



8. In the matter on hand, the claimants themselves have stated in the claim petition that the deceased was travelling as one of the coolie workers in the offending vehicle at the time of the accident. It is not the case of the claimants that the deceased was the owner or the representative of the owner of the goods. It is not disputed that the P.W.2 is the injured, but the deceased and the other injured persons were engaged by one Kumaresan for planting of paddy seedling in his land. P.W.2, who travelled along with the deceased, has categorically admitted in her evidence that they travelled as a coolie workers in the offending vehicle and they were engaged by one Kumaresan. The pleadings of the claimants and the evidence of P.W.2 categorically prove that they were gratuitous passengers in the offending vehicle and hence, I do not find force in the submissions of the learned counsel for the claimants and the decision relied on by the learned counsel for the claimants is factually distinguishable.

9. In **Aandi's** case (supra), the Division Bench of this Court, following the principles laid down in the case of **National Insurance Co. Ltd. vs. Baljit Kaur [2004 (1) CTC 210 (SC)]** and **New India Assurance Co. Ltd. vs. Asha Rani [2004 (2) TN MAC 387 (SC)]**, held that the legal heirs of the deceased or the injured claimants, who are unauthorized passengers in a goods vehicle, are not entitled to claim compensation from the Insurance Company. So, in the light of the decisions cited supra, this Court is of the view that the direction of pay and recover is liable to be set aside.

10. Accordingly, the civil miscellaneous appeal is allowed and the direction issued, vide Judgment and Award dated 20.06.2007 in M.C.O.P.No.179 of 2004, by the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil, to the appellant - Insurance Company to satisfy the award amount and recover it from the owner of the offending vehicle is set aside. It is open to the claimants to recover the award amount from the owner of the vehicle in the manner known to law. At this juncture, the learned counsel for the appellant - Insurance Company submitted that the Insurance Company has deposited the entire award amount to the credit of the claim petition. In view of setting aside of the pay and recover direction, the Tribunal is directed to return the amount lying in the credit of the claim petition to the appellant - Insurance Company forthwith. No costs. Consequently, connected miscellaneous petition is closed.

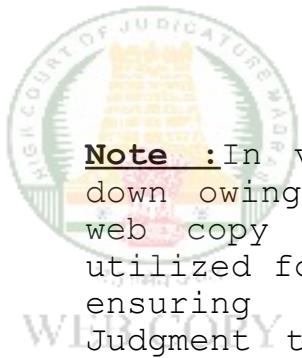
Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)



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

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To:

1. The District Judge,
Motor Accident Claims Tribunal,
Kanyakumari at Nagercoil
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-3222[F] dated 04/02/2021)

+1 CC to M/s.ISSAC CHAMBERS, Advocate (SR-3391[F] dated 04/02/2021)

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