**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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| RESERVED ON | **25.11.2021** |
| DELIVERED ON | **17.12.2021** |

**CORAM :**

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**C.M.A.(MD).No.799 of 2019**
**and**
**C.M.P.(MD)Nos.10408 of 2019 & 2438, 2439 of 2020**

National Insurance Company Limited,
Kumbakonam, represented by its
Branch Manager. ...Appellant/2nd Respondent

Vs.

1.Veeraiyan
2.Chelladurai
3.Amudha
4.Rasathi ...R-1 to R-4/Petitioners
5.Rajesh ...5th Respondent/1st Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 set aside the Judgment and Decree made in M.C.O.P.No.198 of 2016 dated 27.06.2018 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kumbakonam and allow the appeal with Costs.

For Appellant :Mr.J.S.Murali
For R-1 to R-4 :Mr.N.Balakrishnan
For R-5 :No appearance

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed to set aside the Judgment and Decree, dated 27.06.2018 in M.C.O.P.No.198 of 2016, passed by the learned Motor Accident Claims Tribunal/Additional District Judge(Fast Track Court), Kumbakonam.

2.It is a case of fatal accident, which took place on 16.01.2016, at about 02.30 p.m., the deceased Azhagammal was travelling along with others in the TATA Ace Van bearing Regn.No.TN-49-AM-5753 belongs to the 5th respondent herein, Udaiyalur to Andithoppu road, the driver of the TATA Ace van drove the van rash and negligently and capsized the van in the opposite side of cremation place in Anna nagar. In the accident place some persons were herding sheep and cow who were also died. Due to the accident the 1st claimant's wife Azhagammal died.

3.The claimants have filed a petition in M.C.O.P. No.198 of 2016 on the file of the Motor Accident Claims Tribunal/Additional District Judge(Fast Track Court), Kumbakonam, seeking compensation.

4.Before the Tribunal, on the side of the claimants three witnesses were examined as P.Ws.1 to 3 and marked thirteen documents as Exs.P.1 to P.13 and R.W.1 was examined and Ex.R.1 was marked on the side of the insurance company.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the 5th respondent herein and directed the appellant/insurance company to pay a sum of Rs.10,95,664/-as compensation and the same shall be recovered from the 5th respondent herein/owner of the vehicle.

6.The appellant/Insurance company has filed this present appeal.

7. Heard on either side. Perused the material documents available on record.

8. This Civil Miscellaneous Appeal is filed on the ground that the tribunal has grossly erred in awarding a higher compensation for the claimants without appreciating the facts of the case. The tribunal has failed to take note that it is the settled position of law that the insurer cannot be mulcted with the liability when there is no coverage for gratuitous passengers travelling in the goods vehicle.

9.The R-1 to R-4 herein/claimants have filed a petition in M.C.O.P.No.198 of 2016 for claiming compensation for the death of wife of R-1/1st claimant, who died in an road accident occurred on 16.01.2016 at 02.30 p.m., when the deceased travelled in a TATA Ace van, which was insured with the appellant insurance company.

10.The tribunal has awarded a sum of Rs.10,95,664/- as compensation. Aggrieved by the award of compensation the instant appeal has been filed.

11.The tribunal has directed the appellant/insurance company to deposit the entire compensation amount and recover the same from the owner of the vehicle/5th respondent herein. Against the pay and recovery order, the appellant has filed a review petition which was also dismissed. Now, the Insurance company has filed this appeal against the original order of the compensation.

12.The ingredients of the *Section 173 of Motor Vehicles Act*, is extracted hereunder:

"***173.Appeals :***

*(1) Subject to the provision of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :*

*Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court :*

*Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*

*(2)No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees''.*

13.The learned counsel appearing for the claimants/R-1 to R-4 herein contended that after the dismissal of review petition on the same ground, appeal will not lie. But, there is no provision for review under Motor Vehicles Act which goes to the root of the claim. Review cannot be entertained by the tribunal.

14.The present appellant has filed against the Judgment and decree, dated 27.06.2018 in M.C.O.P.No.198 of 2016, passed by the learned Motor Accident Claims Tribunal/Additional District Judge (Fast Track Court), Kumbakonam, not against the Review Petition. Therefore, it can be entertained.

15.The appellant/insurance company has raised an objection for pay and recovery on the ground of 25 persons were travelled in the Goods vehicle. Therefore, the insurance company is not liable to pay compensation and only the owner of the alleged vehicle is liable to pay compensation and also conventional charges of Rs.1,45,000/-.

16.The ingredients of Section ***2(14) of the Motor Vehicles Act*** is extracted hereunder:

"***14.Good carriage.***-*In case if the tractor was being used for transporting the sand it would not be construed to mean that the tractor and trailer can be used for carriage of goods or for other business activities. The tractor is certainly not even a goods carriage as has been defined in Section 2(14) of the Act.*

*Though the tractor alone would a light Motor Vehicle, the tractor trolly would be a goods carriage vehicle within the meaning of Section 2 (14) of the Motor Vehicles Act. In this case the trolley attached to the tractor was actually used for transport of manure and thus the vehicle was adopted and used for carriage of goods.*

*A tractor attached with trolley would constitute a 'goods carriage' under Section 2(14) and consequently transport vehicle under Section 247 of the M.V.Act, the owner of goods or his representative is entitled to travel in the goods vehicle along with his goods in terms of Section 147 of the M.V.Act."*

17.As per permit passengers cannot be allowed to travel in a Goods vehicle. If the owner of vehicle permits, only he is liable.

18.The Paragraph No.29 of the Judgment in ***S.L.Ps.(C) Nos.12040, 12369 of 2002, New India Assurance Co. Ltd Vs. Asha Rani and Others***, is extracted hereunder:

......

*"We may consider the matter from another angle, Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a stautory defence available to the insurer would be obliterated in view of the decision of this Court in Saptpal Singh case."*

The passengers who travelled in goods vehicle also take the risk of travelling in a goods vehicle.

19.There is a difference between goods vehicle and passengers vehicle like bus. For passengers vehicle the owner has to pay premium for passengers also.

20.The paragraph Nos.8 & 9 of the Judgment reported in ***2021 (2)TNMAC 46, in C.M.A.Nos.2731 to 2734 of 2013***, in the case of ***United India Insurance Co. Ltd. Vs. Thulukanammal and Ors.***, are extracted hereunder:

....

*"8.The Hon'ble Division Bench of this Court referred catena of Judgments of the Hon'ble Supreme Court of India and held that the Tribunal*

*was not right in directing the Insurance Company to pay the Compensation and given liberty to recover the same from the Owner. That apart, the intention of the parliament was that the words 'any person' occurring in Section 147 of MV Act will not cover all the persons, who are travelling in a Goods Carriage in any capacity whatsoever. The Hon'ble Supreme Court of India also held that the Goods Vehicle in question was used as Passenger Vehicle and the Insurance Company cannot be statutorily made liable."*

*9.In fine, all the Civil Miscellaneous Appeals stand allowed only in respect of the question of liability of the Appellant/Second Respondent to pay the Compensation. The quantum of Compensation is affirmed and there will be award only as against the First Respondent i.e, the Owner of the Vehicle and the Award as against the Appellant/Second Respondent is permitted to withdraw the set aside".*

21.Here the deceased neither travelled as an authorised person nor owner of goods. So, the Insurance company is not liable to pay compensation.

22.Regarding conventional charges the tribunal awarded a sum of Rs.1,45,000/-which is high. So, as per ***Pranay Sethi's*** case it is reduced to Rs.70,000/-.

23.Finally, this Civil Miscellaneous Appeal is allowed by setting aside the Order and Decree, dated 27.06.2018 in M.C.O.P.No.198 of 2016, passed by the learned Motor Accident Claims Tribunal/Additional District Judge(Fast Track Court),Kumbakonam, regarding the liability of insurance company. R-5/R-1/owner of the vehicle is directed to deposit the compensation amount of Rs.10,20,664/-as modified by this Court, with 7.5% interest from the date of petition till the date of realization, within a period of six weeks from the date of receipt of the copy of the order. After depositing the amount, the claimants are permitted to withdraw the same. If any excess amount deposited, the insurance company is entitled to withdraw the same. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

To
The Motor Accident Claims Tribunal/
Additional District Judge(Fast Track Court),
Kumbakonam.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate ( SR-39435[F] dated 20/12/2021 )

**C.M.A.(MD).No.799 of 2019**
**17.12.2021**

RK(02/02/2022) 6P 5C