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C.M.A.No.1137 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1137 of 2011

and

M.P.No.1 of 2011

1.P.Janarthanan (Died)

2.J.Balakrishnan

3.Mahalakshmi

...Appellants

(Appellants 2 and 3 are brought on record as L.Rs of the deceased sole appellant viz., P.Janarthanan vide court order dated 14.02.2019 made in CMP.No.21987 to 21990 of 2018)

Vs.

1.P.Murugaraju

2.Sumathi

3.Sundari

4. The Manager

United Insurance Company Limited,

74-A, Salai Road,

Trichy.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award and Decree passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court) at Perambalur, dated 24.02.2011 in M.C.O.P.No.202 of 2009.



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For Appellants : M/s.P.Valliappan
for P.V. Law Associates
For Respondents 1 to 3 : Mr.M.Punitha Nithyarani
for Mr. A.A.Venkatesan
For Respondent 4 : Ms.I.Malar

JUDGMENT

This appeal has been filed by the appellants/LRs of the 1st respondent therein seeking to set aside the Award and Decree passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court) at Perambalur, dated 24.02.2011 in M.C.O.P.No.202 of 2009.

2. The case in brief, is as follows:

On the fateful day, i.e., on 17.02.2009, at about 05.30 p.m., the driver of the mini bus bearing Registration No.TN-23-B-8393 drove the vehicle in a rash and negligent manner and dashed against a tamarind tree due to which the branches of the tree pierced the chest of the deceased Thangavel and consequently he died in the accident. The surviving legal heirs of the deceased has filed a claim petition before the Tribunal, seeking compensation of Rs.8,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has held that the accident had occurred due to the rash and negligent driving of the driver of the 1st respondent and accordingly awarded a sum of Rs.2,00,000/- to be paid by the Insurance Company and recover the



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same from the 1st respondent therein with interest at 7.5% and costs. Aggrieved by the quantum of compensation, the appellants/claimants has filed this appeal.

3. The learned counsel for the appellants/claimants has submitted that when the bus nearing Vengalam Village, there was a tractor with trailer driven by its driver coming in a high speed from the opposite direction and hence, to avoid the direct collusion with the tractor, the driver stopped the bus on the extreme left side of the mud road and a thorny bush has suddenly intruded inside the bus and caused injury on the face of the deceased. Because of the sudden and nervous shock, the deceased Thangavel died and not due to the simple abrasions or grievous injuries sustained by him. So the act was happened only due to the absolute negligence of the driver of the tractor and trailer. Therefore, the driver of the bus is no way liable for the incident. Moreover none of the passengers inside the bus have sustained any kind of injuries. He further submitted that one Rathinam has travelled as passenger in the bus and he did not drove the bus. The Tribunal has erred in concluding that the appellant had violated policy conditions, without any basis. He further submitted that the Tribunal has failed to see that the accident did not take place due to the mistake of the driver of the appellant but due to the negligence of the driver of the tractor-cum-trailer. He further submitted that the Tribunal has failed to see that



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the vehicle involved in accident was driven by Rangaraju and not by Rathinam.

The said Rangaraju had a valid driving licence and therefore, there is no violation of policy conditions. The Tribunal has erred in awarding a sum of Rs.2,00,000/- without any basis. It also erred in directing the 4th respondent to pay the compensation and recover the same from the appellant. It erred in discarding the evidence of RW2 /Rangaraju, the driver of the vehicle, who had a valid driving licence and who drove the vehicle, at the time of accident. The police FIR has been registered contra to the real facts in an erratic manner. This petition is bad for non-joinder of the tractor and trailer. Hence, he prays to allow this appeal.

4. Per contra, the learned counsel for the 4th respondent/Insurance company has submitted that the accident happened due to the mistake of the driver of the bus and the said driver do not possess valid driving license at the time accident. Moreover, the Tribunal has awarded just compensation. Hence, he prays to dismiss the appeal.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.



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6. A perusal of records reveals that on the date of accident, one Rangaraj has drove the bus and caused accident, but later it was fabricated that one Rathinam has caused the accident. However, the Rangaraj has not produced the driving license. The license of Rathinam also not produced as exhibits. Hence, it is concluded that the appellant/1st respondent therein has made Rathinam to drive the bus who do not possess valid driving license and caused the accident. Thus, the 1st respondent has violated the policy conditions.

7. On the side of the claimants/respondents, two witnesses were examined as PW1 and PW2 and marked exhibits as Ex.P1 to P5. On the side of the respondents/appellants herein, three witnesses were examined as RW1 to RW3 and marked exhibits as Ex.R1 and Ex.R2.

8. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that due to the rash and negligence driving of the driver of the bus, the accident had happened. In the circumstances, the Tribunal has rightly awarded a sum of Rs.2,00,000/- with interest at 7.5% and costs to be paid by the Insurance Company under pay and recovery method to the claimants. Hence, the same warrants no interference by this Court.



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A.A.NAKKIRAN, J.

gv

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet:Yes/No

gv

To

1. The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate Court) Perambalur.

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

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and
M.P.No.1 of 2011