



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1373 of 2015

and

M.P.No.1 of 2015 & C.M.P.No.4657 of 2016

The Divisional Manager,
United India Insurance Company Limited,
T.K.M. Complex, Katpadi Road,
Vellore.

.. Appellant/2nd Respondent

Vs.

1.Manimala

2.Minor. Banupriya

3.Minor. Sabarinathan

(Minor respondents 2 & 3 represented
by their Mother/Guardian, Manimala,
1st respondent herein)

4.Samburanam Ammal

...Respondents 1 to 4/Claimants 1 to 4

5.Kirubanandam

.. Respondent 5/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.08.2014 made in M.C.O.P.No.203 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Arunkumar

For RR 1 to 4 : Mr.M.Sivakumar
for Mr.C.Prabakaran

For R5 : Mr.B.Sundara Pandiyan



J U D G M E N T

(The matter is heard through "Video Conferencing")

WEB COPY This Civil Miscellaneous Appeal has been filed against the award dated 18.08.2014 made in M.C.O.P.No.203 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellant is the 2nd respondent in M.C.O.P.No.203 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Nithyanandham, who died in the accident that took place on 12.10.2010.

3.According to respondents 1 to 4, on 12.10.2010 at about 03.30 A.M., while the deceased Nithyanandham was travelling as Pori (Puffed Rice) goods owner in the lorry bearing Registration No.TNM 8645 from Bangalore to Chennai near Chitary medu, the driver of the lorry drove the same in a rash and negligent manner and dashed on the backside of the bus bearing Registration No.TN 29 N 1981 and caused the accident. In the accident, the said Nithyanandham sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4, filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation against the 5th respondent and appellant-Insurance Company, being the owner and insurer of the lorry respectively.

4.The 5th respondent - owner of the lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the lorry belonging to 5th respondent filed counter statement and denied all the averments made by the respondents 1 to 4. The appellant denied the manner of accident as alleged by the respondents 1 to 4. The appellant has stated that the deceased was not at all a business man and he neither carried any goods nor engaged the said lorry of the 5th respondent from Dharmapuri. The driver of the lorry only permitted the deceased Nithyanandham to travel in the goods vehicle as against the policy conditions. Therefore, the deceased traveled in the lorry as gratuitous passenger at the time of accident. The lorry belonging to 5th respondent was loaded with Pori (Puffed Rice) from Dharmapuri to Chennai and the 5th respondent alone is the competent person to produce the trip sheet to show that on the date of accident for



which purpose the lorry was used. Therefore, for violation of policy conditions by the 5th respondent and driver of the lorry, the appellant is not liable to pay any compensation to the respondents 1 to 4. On the date of accident, the lorry belonging to 5th respondent was not having valid Registration Certificate, Permit, Insurance Policy and the driver of the lorry was not possessing valid driving licence. The deceased is not entitled to travel in the goods vehicle and he was not covered under the policy. As per the F.I.R., the deceased was a Tailor by profession, but the respondents 1 to 4 took a stand in the claim petition that the deceased was Business Man only for the purpose of filing claim petition. Therefore, only the 5th respondent as well as the Tamil Nadu State Transport Corporation are jointly and severally liable to pay the compensation to the respondents 1 to 4. In any event, the quantum of compensation claimed by the respondents 1 to 4 are highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Srinivasan, eyewitness to the accident was examined as P.W.2 and one Vilvanathan, who sold the puffed rice to deceased was examined as P.W.3 and nine documents were marked as Exs.P1 to P9. The appellant-Insurance Company examined one Kumar as R.W.1 and four documents were marked as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 5th respondent and directed the 5th respondent as well as appellant-Insurance Company to jointly and severally pay a sum of Rs.9,41,100/- as compensation to respondents 1 to 4.

8.To set aside the said award dated 18.08.2014 made in M.C.O.P.No.203 of 2012, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the deceased traveled in the goods vehicle as unauthorized passenger and hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The Tribunal erred in assuming that the deceased travelled along with his goods, based on the evidence of P.W.3 and created Bill, which was marked as Ex.P9. The Tribunal ought to have accepted the evidence of R.W.1 and Exs.R1 & R2 and dismissed the claim petition as against the appellant. The Tribunal has awarded a sum of Rs.9,41,100/- as compensation to the respondents 1 to 4, which is highly excessive and prayed for setting aside the award passed by



the Tribunal.

10.The learned counsel appearing for the respondents 1 to 4 and 5th respondent separately made their submissions in support of the award passed by the Tribunal and prayed for dismissal of appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the case of the respondents 1 to 4 that on 12.10.2010 at about 03.30 A.M., while one Nithyanandham, husband of 1st respondent, father of respondents 2 & 3 and son of 4th respondent was travelling as Pori (Puffed Rice) goods owner in the lorry bearing Registration No.TNM 8645 belonging to 5th respondent and insured with appellant from Bangalore to Chennai, near Chitary medu, the driver of the lorry drove the same in a rash and negligent manner and dashed on the backside of the bus bearing Registration No.TN 29 N 1981 and caused the accident. In the accident, the said Nithyanandham sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4 filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of the said Nithyanandham against the 5th respondent and appellant, being the owner and insurer of the lorry respectively. To substantiate their case, the 1st respondent examined herself as P.W.1, one Srinivasan, eyewitness to the accident was examined as P.W.2 and one Vilvanathan, who sold Pori (Puffed Rice) bags to the deceased was examined as P.W.3. The respondents 1 to 4 marked F.I.R., which was registered against the driver of the lorry as Ex.P1 and Ex.P9/receipt dated 11.10.2010 issued by P.W.3 for having sold Puffed Rice to the deceased Nithyanandham.

13.On the other hand, it is the case of the appellant that accident did not occur due to the negligence on the part of the driver of the lorry belonging to 5th respondent. But, the accident has occurred due to the negligent parking of the driver of the State Transport Corporation Bus without any signal. The deceased traveled in the goods vehicle as unauthorized passenger and hence, the appellant is not liable to pay any compensation. The appellant has not examined any eyewitness to substantiate their case. They examined one Kumar as R.W.1, who is an official of the appellant and he is not an eyewitness to the accident. The Tribunal considering the evidence of P.W.2 and Ex.P1/F.I.R., held



that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to 5th respondent. There is no error in the said finding of the Tribunal.

14. Further, P.W.3 deposed that he sold Puffed Rice to the deceased Nithyanandham and produced Ex.P9/receipt dated 11.10.2010 for having sold the Puffed Rice to the deceased. Considering the evidence of P.W.3 and other documents filed by the respondents 1 to 4, the Tribunal held that the deceased traveled along with Pori (Puffed Rice) bags as owner of the goods. The appellant has not let in any contra evidence to disprove the evidence of P.W.2 & P.W.3. The Tribunal considering the evidence of P.W.3 and contents of Ex.P9, held that the deceased traveled along with his goods as owner and hence, the 5th respondent as well as appellant are jointly and severally liable to pay the compensation to the respondents 1 to 4. There is no error in the award of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, the respondents 1 to 4 claimed that the deceased was aged 38 years, doing Pori (Puffed Rice) Business and was earning a sum of Rs.15,000/- per month. They have not filed any document to substantiate the income. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. As per Ex.P2/postmortem certificate, the deceased was aged 40 years at the time of accident. The Tribunal has granted only 30% enhancement towards future prospects. The respondents 1 to 4 are entitled to 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]. In view of the above, the excessive amount awarded by the Tribunal towards loss of love and affection is not interfered with.

16. For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.9,41,100/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The 5th respondent as well as the appellant-Insurance Company are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.203 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court,



Vellore. On such deposit, the respondents 1 and 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 & 3. Consequently, the connected Miscellaneous Petitions are closed No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Vellore.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.B.Sundara Pandian, Advocate SR.No.3779
+lcc to Mr.C.Prabakaran, Advocate SR.No.4104

C.M.A.No.1373 of 2015

NMI (CO)
CB(28/02/2022)