



C.M.A.(MD)No.1431 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.06.2022

Delivered On : 06.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1431 of 2011

New India Assurance Co. Ltd.,
No.92,Keezha Coast Chambers,
I Floor, G.N.Chetty Road,
T.Nagar, Chennai.

.. Appellant /2nd Respondent

Vs.

S.Krishnan (deceased)

1.K.Dhanalakshmi

2.K.K.Veerachamy

3.K.Selvaraj

4.K.Arumugam

5.V.Rajasekar

.. Respondents 1 to 4/ Petitioners 2 to 5

.. 5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 21.03.2011, made in M.C.O.P.No.1217 of 2006, on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Trichy and to set aside the same.



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For Appellant : Mr.N.Dilip Kumar
For Respondent Nos. 1 to 4 : Mr.S.Muthukrishnan
For Respondent No.5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 21.03.2011, made in M.C.O.P.No.1217 of 2006, on the file of the Motor Accidents Claims Tribunal - I Additional Sub Court, Trichy. The appellant herein is the second respondent and the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.1217 of 2006, is as follows:

On 05.02.2006, at about 4.00 pm, the deceased was travelling in a minidoor Auto bearing Registration No.TN-46-C-7985, along with the goods, at that time, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to the said impact, the vehicle capsized down in a pit. The deceased succumbed to the injuries. The deceased was earning Rs.6,000/- per month and the claimants claimed Rs.6,00,000/- as compensation.



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WEB COPY 3. Brief substance of the counter filed by the second respondent in M.C.O.P.No.1217 of 2006, is as follows:

The vehicle belonged to the first respondent. The vehicle was insured with the second respondent. The vehicle is a commercial vehicle. Nobody is permitted to travel in a commercial vehicle. The deceased did not travel in the cabin. He travelled along with the goods. Hence, the first respondent alone is liable to pay compensation and prayed the petition to be dismissed.

4. On the side of the claimants, 2 witnesses were examined and 4 documents were marked. On the side of the respondents, 1 witness was examined and 1 document was marked. After considering both sides, the Tribunal awarded a sum of Rs.2,35,000/- as compensation to be paid by the first and second respondents and the second respondent / Insurance Company was directed to pay the compensation and thereafter, to recover the same from the first respondent.

5. Against the order, the appellant / Insurance company has filed this appeal on the following grounds:-

The deceased was an unauthorized passenger. The Tribunal is wrong in fixing the liability on the appellant. The seating capacity of the vehicle is one.



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Except the driver, no other person is entitled to travel in the goods carrier vehicle.

The finding of the Tribunal that the deceased can travel as the owner of the vehicle is against the provisions of the Motor Vehicles Act. The Tribunal ought to have passed the award only against the owner of the vehicle. In case of violation of policy condition, the owner alone is liable. The Tribunal has erred in fixing the monthly income as Rs.3,000/-, without any record. The Tribunal has erred in awarding Rs.1,92,000/- for loss of dependency. The Tribunal ought to have deducted 50% towards personal expenses. Awarding Rs.40,000/- towards loss of love and affection is erroneous. The total compensation is excessive and the interest also is to be reduced.

6. On the side of the appellant, it is stated that the deceased travelled as a gratuitous passenger and he travelled on the top of the goods in the carriage. The vehicle capsized. Including the deceased, three persons have travelled in the vehicle and two of them travelled behind the Cabin, sitting on the gunny bags. Section 238 of the Motor Vehicles Act, prohibits travelling on the top of the goods. There is no possibility of an order of pay and recover, in cases of gratuitous passengers.

7. A judgment of the Hon'ble Supreme Court reported in **2008-1-SCC-423** (*National Insurance Co. Ltd., V. Cholleti Bharatamma and others*) is cited, wherein, it is stated as follows:-



“11. The effect of 1994 amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.* [(2004) 2 SCC 1], wherein this court following *Asha Rani (supra)* opined that the words injury to any person would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma & Ors.* [(2005) 12 SCC 243] wherein upon taking into consideration a large number of decisions, the said view was reiterated.

....

19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle. “

8. Another judgment of the Hon'ble Supreme Court reported in **2013-11-SCC-554 (National Insurance Company Limited V. Savitri Devi and others)** is cited on the side of the appellant, wherein, it is stated as follows:-

“13. ... It is also clarified that the claimants, in any case, would be entitled to recover the balance amount of the compensation awarded to them vide impugned judgment and order of the learned Single Judge, dated 28.07.2005 from the estate of the deceased owner. The appeals are allowed to this extent.”

9. On the side of the respondents 1 to 4/ claimants, it is stated that the deceased was travelling with the goods and the deceased is entitled to travel with the



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goods. The Insurance company can pay the compensation and can recover the same from the owner of the vehicle and prayed the appeal to be dismissed.

10. A perusal of the policy copy reveals that no premium was paid for any passenger. The nature of the vehicle is goods carrier. The deceased has travelled on the top of the goods. The owner of the vehicle has allowed the vehicle to be used for carrying gratuitous passenger. The judgments cited on the side of the appellant / Insurance Company are applicable to the facts of the present case. Hence, it is decided that the owner of the vehicle alone is liable to pay compensation to the deceased. No liability can be fastened on the Insurance Company.

11. With the above observation, the award passed by the Tribunal is modified. The fifth respondent herein / Rajasekar is liable to pay compensation of Rs.2,35,000/- with proportionate interest and costs to the claimants. This Appeal is partly allowed.

12. The fifth respondent herein / Rajasekar is directed to deposit the entire compensation of Rs.2,35,000/- with accrued interest at the rate of 7.5% from the date of petition till the date of realization and with costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. The Insurance Company is entitled to refund of amount, if any, was already deposited.



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On such deposit being made, the Tribunal may permit the claimants to withdraw their shares as apportioned by the Tribunal with interest and costs immediately, on the filing of proper petition before the Tribunal, less the amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

06.07.2022

Index : Yes/No

Internet : Yes/No

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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.



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R. THARANI, J.

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To

- 1.The Motor Accidents Claims Tribunal -
I Additional Sub Court,
Trichy
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1431 of 2011

06.07.2022