

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.984 of 2009

Iffco Tokyo General Insurance Company Limited,
Rep by Branch Manager,
No.28, Old No.195, 1st, 2nd Floor,
North Usman Road,
T.Nagar,
Chennai-600 017

... Appellant

VS.

1.Seeniammal

2.Minor Mahendiran

3.Indu

4.Madasamy

5.Chinnasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 02.07.2009 made in MCOP No.91 of 2008 on the file of the Motor Accidents Claims Tribunal/II Addl.District Judge (incharge), Tirunelveli.

For Appellant	: Mr.S.Srinivasa Raghavan
For R-1 to R4	: Mr.V.Sasikumar
For R5	: No appearance

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside the order dated 02.07.2009 made in MCOP No.91 of 2008 on the file of the Motor Accidents Claims Tribunal/II Addl.District Judge (incharge), Tirunelveli.

2. Brief facts of the claim petition are as follows: -

On 29.12.2007 at 9.30 p.m, the deceased was travelling in a load-auto bearing Registration No.TN-69-P-4474 proceeding to Kovilpatti. Since the driver of the load-auto drove it in a rash and negligent manner, the deceased was thrown out from the vehicle. In the impact, he sustained head injury. Immediately, he was taken to the Kovilpatti Government Hospital, where first aid was given to him. Subsequently, he was taken to the Government Hospital, Tirunelveli, on the same day itself, but he was died on 04.01.2008 at 11.00 pm. According to the claimants, due to the rash and negligent driving of the driver of the auto the accident had happened. The fifth respondent is the owner of the auto and the appellant is the insurer of the said auto. The first claimant is the

wife, second claimant is the son and the claimants 3 and 4 are the parents of the deceased. Alleging that the accident had happened only due to the rash and negligent driving of the driver of the auto, the claimants filed the claim petition before the Tribunal.

3. In the claim petition, the appellant/Insurance Company filed their counter, wherein, they denied the averments made in the claim petitions. Further, in the counter affidavit, it has been stated that the compensation claimed by the respondents/claimants is highly and excessive. Moreover, the vehicle involved in the accident was a load-auto. As per R.C Book, carrying capacity is two including the driver. On the date of accident, the offending vehicle carried four persons besides the driver. It also carried matchbox bundles. The deceased traveled as a gratuitous passenger and not as a load-man. Hence, the first respondent had violated the policy condition. Moreover, the policy did not cover its liability to a loadman. Hence, the respondent is not liable to pay any amount of compensation much less than the amount claimed by the claimants. Moreover, the driver is not possessed the valid driving licence at the time of accident. Hence, they prayed for dismissal of the claim petition.

4.Before the lower Court, on the side of the claimants, two witness were examined as P.W.1 and P.W2 and five documents were marked as Exs.P.1 to P.6. On the side of the appellant/Insurance company, four witnesses were examined as R.W.1 to R.W4 and three documents were marked as Exs.R1 to R3.

5. The Tribunal, after considering the oral and documentary evidences and arguments made on either side, partly allowed the claim petition and awarded a sum of Rs.5,55,000/- with 7.5% interest per annum as compensation to the claimants. Against which, the appellant/Insurance Company has filed this present appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that there is no evidence to show that the deceased was a loadman. The Owner of the vehicle was also not examined to prove the same. He further submitted that the deceased Karuppasamy was a gratuitous passenger in a goods vehicle and hence, no liability can be fastened on the insurer of the vehicle and therefore, the appellant is not liable to pay any compensation to the respondents 1 to 4, who are the

dependants of the deceased. Therefore, he prayed this Court to allow this appeal.

7.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the Tribunal, after considering all the circumstances available in the claim petition, has rightly awarded Rs.5,55,000/- as compensation and therefore, the award passed by the Tribunal is perfectly correct and the same needs no interference.

8.Heard the learned counsel appearing for the appellant/Insurance Company and learned counsel for the respondents 1 to 4/claimants and perused the records.

9. In the case on hand, there is no dispute that the claimants are the legal heirs of the deceased Karuppasamy, who died in an accident on 29.12.2007. The claim petition was opposed by the appellant – Insurance Company contending that the deceased was a gratuitous passenger. This Court has examined the impugned award. As seen from the impugned Award, it has been the consistent stand of the claimants who are the respondent Nos.1 and 2 in this appeal that the deceased was

travelling in the load-auto at the time of the accident as load-man by carrying goods. Even though the Appellant contended in its counter statement that the deceased was an unauthorized gratuitous passenger, no evidence has been produced by the Appellant before the Tribunal to establish that the deceased was a gratuitous passenger. It is for the Appellant to produce sufficient evidence to prove that the deceased was a gratuitous passenger, but they miserably failed to prove the same before the Tribunal. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant/Insurance Company. Hence, considering all these facts, the Tribunal has rightly awarded compensation to the claimants/respondent Nos.1 to 4, which is payable by the Appellant/Insurance Company.

11.In the considered view of this Court, there is no infirmity in the Award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award and decree dated 02.07.2009 made in MCOP No.91 of 2008 is confirmed.

12. The appellant/ Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum

from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit is being made by the appellant, the respondents 1, 3 and 4/claimants are permitted to withdraw their share as apportioned by the tribunal. Since the second respondent herein is a minor at the time of accident, his share amount is ordered to be deposited in any one of the Nationalized Bank till he attains majority and the first respondent/mother is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor. No costs.

06.09.2022

Index :Yes/No

Internet :Yes/No

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To

1.The Motor Accidents Claims Tribunal/
II Addl.District Judge (incharge),
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.984 of 2009

A.A.NAKKIRAN,J.

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JUDGMENT MADE IN
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