



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	31.01.2022
DELIVERED ON	11.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.598 of 2021

and

C.M.P. (MD) No.5814 of 2021

M/s.ICICI Lombard Motor Insurance Company Ltd.,
ICICII Lombard House,
414, Veera Savarkar Marg,
Sidhi Vinayak Temple,
Brabhadevi, Mumbai,
Maharashtra - 400 025.

...Appellant/3rd Respondent

Vs.

1.M.Jeyaraj
2.K.Manickam
3.K.Palaniyammal
K.Ganesan (Died)
4.N.Krishnaveni
5.K.Selvaraj
6.K.Poomathi
7.G.Thangammal
8.G.Shiva Kumar
9.G.Gomathi
10.G.Gopi

...R-1 & R-2/R-1 & R-2
...R-3/1st Petitioner

...R-4 to R-6/3rd to 5th Petitioners

...R-7 to R-10/6th to 9th Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to call for the records pertaining to the order passed by the learned Special District Judge/Motor Accident Claims Tribunal, Trichy, in M.C.O.P.No.4712 of 2013, dated 05.02.2021 and set aside the same by allowing the appeal.

For Appellant :Mr.P.Pethu Rajesh
For R-3 to R-10 :Mr.P.Arun Jeyatram
For R-1 & R-2 :No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order, dated 05.02.2021 in M.C.O.P.No.4712 of 2013, passed by the District Judge/Motor Accident Claims Tribunal, Trichy.



2.It is a case of fatal accident, which took place on 29.06.2012 the husband of the 1st claimant went along with his relations in a TATA ACE vehicle bearing Regn. No.TN.09-BM-8847 from Salaipatti to North Salaipatti, near Kamatchi Nagar. The driver of the TATA ACE drove the vehicle with rash and negligent manner and capsized the vehicle. Due to the said accident, the husband of the 1st claimant, namely; Kanthan died.

3.The claimants have filed a petition in M.C.O.P. No.4712 of 2013 on the file of the learned Special District Judge/Motor Accident Claims Tribunal, Trichy, seeking compensation.

4.Before the Tribunal, on the side of the claimants one witness was examined as P.W.1 and marked six documents as Exs.P.1 to P.6 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 was occurred only, due to the rash and negligent driving of the driver of the TATA ACE vehicle and pay and recover was ordered.

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

7.The claimants have filed the claim petition in M.C.O.P.No.4712 of 2013 for the death of the husband of the 1st claimant, namely; Kandan who died on 29.06.2012 in road accident when he was travelling in TATA ACE TN 09BM 8847 with his relatives, the driver drove the van in rash and negligent manner. The van was capsized. In the said accident, Kandan sustained grievous injuries and died in the hospital.

8.The wife and children of the deceased have filed the claim petition before the tribunal for compensation. The tribunal has awarded a sum of Rs.3,46,000/- as compensation and Pay and Recover was ordered.

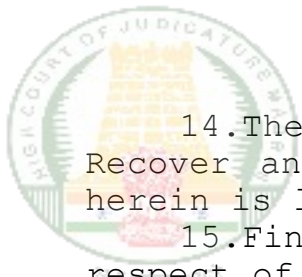
9.Against the Pay and Recover order, the appellant/insurance company has filed this appeal. The quantum of the award is not disputed by the appellant.

10.The learned counsel appearing for the appellant/insurance company contented that since the deceased travelled as gratuitous passenger in the Goods vehicle and therefore, only the owner of the vehicle is liable to pay compensation. Pay and Recover cannot be ordered as against the appellant/Insurance company.

11.In support of his contention, the learned counsel for the appellant/insurance company has relied upon the Judgment passed by the Division Bench of this Court, dated 24.10.2018 in C.M.A.Nos.1529 to 1533 of 2015. The above judgment followed the Judgment of Hon'ble Supreme Court Judgment in **Asha Rani's** case.

12.As per judgment reported in **2021 (2) TNMAC 46**, the owner of vehicle which was involved in the accident is liable to pay compensation for the gratuitous passenger.

13.It is admitted fact that 40 passengers were travelled in the TATA ACE vehicle. The First Information Report was also marked as Ex.P.1 in which the above facts were clearly established.



14. Therefore, the tribunal ought not to order for Pay and Recover and only the owner of the TATA ACE vehicle/2nd respondent herein is liable to pay compensation.

15. Finally, this Civil Miscellaneous Appeal is allowed only in respect of the question of liability of Insurance company to pay the compensation. The quantum of compensation is affirmed and the 2nd respondent herein/owner of the vehicle is directed to pay the entire award amount as awarded by the tribunal, within a period of six weeks from the date of receipt of copy of the order. The appellant/Insurance company is entitled to withdraw the deposited amount, if any. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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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.

To
The Special District Judge/
Motor Accident Claims Tribunal,
Trichy.

Copy to:

1. K. Manickam, S/o. Kulandaivel,
No. 105, Thandhai Periyar Street, MGR Nagar,
Chennai-15.

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

+1 CC to M/s. P. PETHU RAJESH, Advocate (SR-6036[F] dated
14/02/2022)

C.M.A. (MD) .No.598 of 2021

11.02.2022