



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.773 of 2020
and CMP.No.4862 of 2020

Branch Manager,
Cholamandalam MS General Insurance Co. Ltd.,
Dare House, 2nd Floor,
No.2, NSC Bose Road, Chennai-1. .. Appellant

Vs.

1. Chandra
2. Vengatesan
3. Lalitha
4. Pavunrasu .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.09.2018 made in MACT. OP.No.152 of 2017 on the file of the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate) Ariyalur.

For Appellant : Mr.K.Vinod
For Respondents : Mr. K.Gandhi Kumar RR1 to 3
R4 – No appearance

J U D G M E N T

This appellant/Insurance Company has come forward with this appeal seeking quashment of the judgment and decree dated 19.09.2018 made in



MACT. OP.No.152 of 2017 on the file of the Motor Accidents Claims Tribunal (Sub Court) Cheyyar.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

On 22.08.2004, at about 14.45 hours in Perungalathur to Dhandappanatham, a mini lorry bearing Reg. No. TN 25 W 5313, came in a rash and negligent manner, dashed against the bus bearing Reg. No. TN 25 Y 0220, the appellant, who is a passenger in the mini lorry, sustained grievous injuries and admitted in the hospital and died on 28.10.2016. Thereby, the claimants have filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.10,00,000/-.

3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimant, two witnesses were examined viz., PW1 and PW2 and marked 15 documents viz., Exs.P1 to P15, On the side of the Insurance company, three witnesses were examined and four documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence,



allowed the petition in part and awarded a sum of Rs.8,62,000/- as compensation to the claimants. Aggrieved by the said award, the appellant has filed this appeal before this Court for reduction of compensation.

4. The learned counsel for the appellant/Insurance company submitted that the Tribunal has failed to appreciate that the deceased was a gratuitous passenger in the goods vehicle and that the appellant, as insurer was not liable to cover such risks of gratuitous passengers either under MV Act. Before the Tribunal, the owner of the vehicle/RW1 has clearly deposed that the deceased was an unauthorized passenger and he was sleeping on the top of the goods. Therefore, the appellant is not liable to pay compensation. Therefore, this Court may set aside the award and allow this petition.

5. The learned counsel appearing for the respondents/claimants contended that due to the accident the deceased sustained head injury and died. The Tribunal has awarded the compensation for the death of the deceased Selvaraj, which is just and reasonable and the same cannot be interfered with by this Court.



6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The factum of the accident is not disputed by the parties. Admittedly, the deceased Selvaraj met with an accident on 26.10.2016, while he was travelling in a TATA Ace Mini Lorry and died on 28.10.2016. It is the main grievance of the appellant that the deceased was the gratuitous passenger and he was travelling on the top of the coconut leaves. When the driver of the mini lorry applied sudden break, the deceased fell down and sustained fatal head injury and therefore, negligence is on the part of the deceased and the driver of the mini lorry and the appellant is not liable to pay the compensation.

8. On perusal of the award, it is seen that as per the FIR, the accident had happened only due to the rash and negligent driver of the mini lorry and before the Tribunal no explanation was offered in respect of the contributory negligence as alleged by the appellant as well as the driver of the mini lorry and rebuttal evidence has been placed before the Tribunal as



well as this Court. The Tribunal has rightly considered the issue and awarded compensation, which is just and reasonable and this Court do not find any reason to interfere with the award.

9. In the result, the civil miscellaneous appeal is dismissed. The insurance company is directed to deposit the compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any already deposited within a period of four weeks from the date of receipt of a copy of this order and thereafter, recover the amount from the 4th respondent. On such deposit, the respondents 1 to 3 are permitted to withdraw the same on making proper application before the Tribunal. The apportionment of compensation between the claimants shall be as ordered by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

06.12.2023

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M.DHANDAPANI,J.

Rli

Index : Yes
Speaking Order : Yes
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To

The VI Judge, Motor Accidents Claims Tribunal
(Small Causes Court) Chennai.

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