



C.M.A.No.1467 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1467 of 2013
and M.P.No.1 of 2013

The Oriental Insurance Co. Ltd.,
No.17-A, Krishnagiri Road,
SKS Complex, Ranipet.

... Appellant

Vs.

1.L.Krishnammal (Died)
2.P.Latchumanan
3.L.Vidhya
4.D.Saravanan

... Respondents

[RR2 & 3 Lrs of the deceased R1
as per memo dated 07.09.2021 and
vide order dated 07.09.2021]

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgment and Decree dated 27.04.2012 passed in M.C.O.P.No. 442 of 2010 on the file of the Motor Accident Claim Tribunal, (Principal District Judge), Krishnagiri.



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For Appellant : Mr.M.Krishnamoorthy

For Respondents

For R1 : No appearance

For R2 : Mr.J.Titus Enock

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri, in MACT O.P.No.442 of 2010 dated 27.04.2012.

2. The Insurance Company is the appellant herein, preferred the above appeal challenging the award of the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri, in MACT O.P.No.442 of 2010 on the ground of liability.

3. It is the case of the claim petitioner that on 13.10.2010 at about 00.10 hours, when Srinivasan (since deceased) was proceeding in a Swaraj Mazda



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van bearing Regn.No.TN-23-AP-2171, with vegetables with some others from Krishnagiri to Chennai, driven by its driver in a rash and negligent manner, near Leprosy Rehabilitation Illam, Bargur, rear tyre of the van burst out and the said vehicle lost control and dashed against the road side wall, due to which, the said vehicle capsized. Hence the accident occurred, due to which, one Govindasamy died on the spot and others got multiple fracture injuries. Immediately, the deceased Srinivasan was taken to Krishnagiri Government Hospital and thereafter, shifted to NIMHANS Hospital, Bangalore and admitted there as in-patient, in spite of treatment, the said Srinivasan died. Hence the claim petition.

4. The 4th respondent herein-owner of the Swaraj Mazda van remained exparte before the Tribunal.

5. The appellant-Insurance Company filed separate counter statement and denied all the averments made by the claim petitioners. According to the appellant, the accident has not occurred as alleged by the claim petitioners. According to the appellant, due to poor maintenance of the vehicle by the 4th



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respondent herein, the tyre of the vehicle got burst and also due to the rash and negligent driving of the driver of the lorry, the accident occurred. Hence, the appellant is not liable to pay any compensation to the claim petitioners. The driver of the Swaraj Mazda van belonging to 4th respondent herein was not possessing valid driving license and the said van was not insured with the appellant at the time of accident. The claim petitioners have to prove the age, avocation, income by producing valid documents. In any event, the quantum of compensation claimed by the petitioners are highly excessive and prayed for set aside the award of the Tribunal.

6. Before the Tribunal, on the side of the claim petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked and on the side of the respondents no was examined and no document was marked.

7. The Tribunal considering the pleadings, oral and documentary evidene, held that the accident has occurred only due to rash and negligent driving by the driver of the Swaraj Mazda van belonging to 4th respondent herein and the appellant, being the insurer of the 4th respondent herein vehicle,



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was directed to pay the a sum of Rs.4,09,000/- along with 7.5% interest per annum. Aggrieved by the same, the appellant-Insurance Company has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that at the time of accident, the driver of the Swaraj Mazda van belonging to 4th respondent herein did not possess valid and effective driving license to drive the vehicle. The 4th respondent herein has committed breach of policy condition by permitting the driver to drive the vehicle without license and to carry passengers in the goods vehicle. The deceased traveled as unauthorized passenger by sitting on the goods in the open space. The Tribunal ought to have exonerated the appellant and fastened the liability on the 4th respondent herein-owner of the offending vehicle and prayed for allowing the appeal.

9. It is seen from the records that according to the 4th respondent herein at the time of accident there was valid insurance policy in force and the Tribunal rightly directed the appellant to pay the compensation to the claim petitioners and prayed for dismissal of the appeal.



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10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

11. On perusal of records it is seen that on 13.10.2010 at about 00.10 hours the deceased along with others traveled with Vegetable bags from Krishnagiri to Chennai in the offending vehicle. The driver of the van drove the same in a rash and negligent manner and due to the same, the rear tyre of the said van got burst and the vehicle capsized. Due to the said impact, the deceased fell down from the van and died on the way to hospital. Hence, the claim petitioners filed the above said claim petition claiming compensation.

12. In support of their case, they examined themselves as P.W.1 and P.W.2 and marked F.I.R. as Ex.P1. On the other hand, it is the case of the appellant that the 4th respondent herein-owner of the lorry has not insured the lorry with the appellant and the driver of the van was not possessing driving license at the time of accident and the accident occurred only due to poor maintenance of the vehicle and generally denied all the averments made in the



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claim petition. The appellant has not let in any oral or documentary evidence to prove their case. In the appeal, the appellant has raised grounds that deceased and other, who travelling the vehicle are gratuitous passengers as they traveled in the goods vehicle sitting above the goods in open space and at the time of accident, 8 persons traveled in the goods vehicle. No such stand was taken by the appellant in the counter statement and no evidence was let in to prove that the deceased was sitting on the goods and also 8 passengers traveled in the goods vehicle at the time of accident. The appellant is not entitled to raise new grounds without pleadings in the counter statement. Further the appellant has not let in any evidence in support of their case. The appellant in the grounds of appeal stated that the deceased was travelling by sitting over the goods. The Tribunal considering all the materials placed before it held that accident has occurred only due to rash and negligent driving by the driver of the 4th respondent herein and the appellant failed to prove that the driver of the 4th respondent herein's vehicle did not possess valid driving license and insurance policy issued by the appellant was in force and directed the appellant to pay the compensation. The appellant without any pleadings, now cannot raise new ground that the deceased is the gratuitous passengers.



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13. For the above reason, the Civil Miscellaneous Appeals is dismissed and the compensation awarded by the Tribunal at Rs.4,09,000/- together with interest and costs is hereby confirmed. The appellant is 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.442 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the claimants are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

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(1/3)

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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A.A.NAKKIRAN.J,

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To

The Presiding Officer,
The Motor Accident Claim Tribunal,
The Principal District Court,
Krishnagiri.

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