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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

CMA.No.1665 of 2018
and CMP.Nos.13140 of 2018 & 11889 of 2017

M/s.Reliance General Insurance Company Limited,
Rai's Towers, Plot No.2504
2nd floor, 2nd Avenue,
Anna Nagar,
Chennai – 40.

... Appellant

Vs

1. Amudha (died)
2. Revathi
3. Roja
4. Sumathi
5. Poorani
6. Maheswari

... Respondents

(first respondent died and memo dated 09.06.2022 to that effect is taken on record by this Court on 07.02.2023)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 06.10.2016 made in M.C.O.P.No.50 of 2015, on the file of Motor Accidents Claims Tribunal, Special District Judge, Villupuram.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.S.Tamilselvan for R1 to R5



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decree dated 06.10.2016 made in M.C.O.P.No.50 of 2015, on the file of Motor Accidents Claims Tribunal, Special District Judge, Villupuram.

2. The facts of the case in a nutshell:-

On 04.05.2011 at about 4:00 p.m. the deceased Mani @ Subramani who was doing Tamarind business was travelling with his goods (Tamarind) from Manaparai Santhai to Villupuram in the 6th respondent's vehicle bearing Reg.No.TN-45-AW-7043 and when the vehicle was coming near Malaiyappa Nagar diversion road in National Highways 45 road, the driver of the vehicle had rashly and negligently applied sudden break. As a result, the vehicle capsized and met with an accident. The deceased Mani @ Subramani was thrown out and sustained grievous injuries all over the body especially on the head and was immediately admitted in Perambalur Government Hospital and thereafter he was referred to PIMS hospital, Pondicherry where he died. The case of the claimants are that the accident had happened due to the rash and negligent driving of the driver of the 6th respondent herein.



WEB COPY 3. The respondents 2 to 5 herein were depending upon the income of the deceased and starving after the death of the deceased Mani @ Subramani. Hence they filed a claim petition before the Tribunal claiming compensation for a sum of Rs.7,00,000/- against the respondents therein with interest and costs. The Tribunal has awarded a sum of Rs.6,86,500/-.

4. Aggrieved by the award passed by the Tribunal, the Insurance Company has come on appeal before this Court.

5. The learned counsel for the appellant/Insurance Company submitted that the deceased Mani @ Subramani is not the owner of the vehicle and the Insurance contract is only between the appellant and the 6th respondent and there is no cover under the contract for the claimants to claim compensation from the Insurance Company. The learned counsel further submitted that the vehicle bearing Reg.No.TN-45-AW-7043 is a TATA ACE for LMV Goods carrier which caused the accident is insured with the appellant/Insurance Company and insured for carrying goods only and the policy has been specifically issued for the same. Carrying of the passengers for hire or reward



is a clear violation of policy and law. On the date of accident the deceased and others as per FIR which has been marked as Ex.P1 have travelled as fare paying passengers. Thus the first respondent breached the terms and conditions of the policy and violation of law and breach of policy conditions. The appellant/Insurance Company is not liable to indemnify the 6th respondent who is the owner of the vehicle.

6. The learned counsel for the appellant submitted that the seating capacity of the TATA ACE (LMV Goods carrier NCP) bearing Reg.No.TN-45-AW-7043 is only two (including the driver) as per the column No.13 of the Certificated of Registration and at the time of accident the deceased has travelled over the goods as unauthorised passenger and the act of the 6th respondent is a clear violation of Rule 28 of the Road Regulations, 1989. He further submitted that it is compulsory that a person who drives a transport vehicle should have a specific badge endorsement in driving license and the driver of the 6th respondent vehicle bearing Reg.No.TN-45-AW-7043 was not holding a valid and effective driving license at the time of the accident. The 6th respondent being the owner of the vehicle has not taken any precaution before handing over the vehicle to his driver and it amounts to violation of



policy terms and conditions. The learned counsel further submitted that the appellant is not liable to pay compensation to the respondents 1 to 5 herein in spite of the fact that they have failed to prove that the deceased was an authorised to travel at the time of accident as defined under Section 147 of the Motor Vehicles Act. The Tribunal also failed to note that the 6th respondent being the owner of the vehicle has willfully violated the policy conditions by permitting to carry passengers in a goods vehicle, not connected to the hiring and without valid driving license. The Tribunal did not appreciate the evidence of RW1 & RW2 and Ex.R1 to Ex.R.6 in a proper perceptive which has lead in coming to an erroneous conclusion. Hence prayed for setting aside the award and decree dated 07.10.2016 passed by the Tribunal in MCOP.No.50 of 2015.

7. The learned counsel appearing for the respondents 1 to 5 submitted that the first respondent had died on 09.04.2021 during the pendency of this case leaving the respondents 2 to 5 as her legal heirs. A copy of the death certificate of the first respondent was also produced and the learned counsel also filed a memo dated 09.06.2022 to that effect which has been taken on record by this Court. The learned counsel further submitted that the accident



took place because of the rash and negligent driving of the driver of the 6th respondent's vehicle bearing Reg.No.TN-45-AW-7043 due to which the deceased Mani @ Subramani sustained grievous injuries in the head and later died at PIMS Hospital, Pondicherry. The respondents 2 to 5 are suffering from loss of love and affection, loss of happiness and respondents are starving after the death of Mani @ Subramani. He further submitted that the deceased Mani @ Subramani was doing tamarind business and after his death the dependents namely respondents 2 to 5 are starving and their survival is in question. The sixth respondent being the owner of the vehicle has validly insured with the appellant Insurance Company. The learned counsel for the respondents relied upon the judgment of this Court made in CMA (MD).No.972 of 2011 in the case of *Manjula and others Vs M.Sakthivel and other* and the relevant paragraphs are extracted as below:-

25. In the said judgments, this Court held that as per Section 147(1) of the Motor Vehicles Act as well as IMT 37-A, the owner or authorised representative of goods is entitled to claim compensation from the Insurance Company and the Insurance Company is liable to pay compensation. This Court, in the judgment dated 25.09.2014, made in CMA.No.2825 of 2010 referred to above, elaborately considered the scope of Rule 236 of Tamil Nadu Motor Vehicles Rules. This Court held that as per the said Rule, six persons can travel along with their



goods. Once six persons are permitted to travel along with the goods as per the said Rule, some of the persons have to travel only in the backside of the vehicle as only three persons can travel in the Cabin. In view of the same, the contention of the learned counsel for the second respondent that the deceased Tamilselvan travelled in the backside of the goods vehicle as an authorised passenger and therefore, the second respondent Insurance Company is not liable to pay compensation, is without merits.

26. The Tribunal has failed to consider Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules and IMT 37-A. As per the above provision, the owner of goods, even if he travels in the backside of the goods vehicle along with his goods, is entitled to claim compensation from the Insurance Company for the injuries and his legal heirs are entitled to claim compensation from the Insurance Company for the death.

8. Hence the Tribunal is correct in awarding the compensation to the respondents 1 to 5 and prays that the above award and decree dated 06.10.2016 made in MCOP.No.50 of 2015 has to be confirmed and the Civil Miscellaneous Appeal is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. On perusal of the materials available on record it is pertinent to



note that the deceased Mani @ Subramani was doing tamarind business and he was travelling with his goods namely Tamarind which was loaded in the 6th respondent's TATA ACE (LMV Goods carrier NCP) vehicle bearing Reg.No.TN 45 AW 7043 hence it cannot be concluded that the deceased is an unauthorised passenger travelled in the above said vehicle. The findings of the Tribunal is also that the owner of the goods namely Tamarind the deceased Mani @ Subramani was travelling in the vehicle owned by the 6th respondent. The FIR which was registered after the accident in Crime No.350 of 2011 in Perambalur Police Station shows that the driver of the vehicle was shown as an accused for driving the vehicle in a rash and negligent manner. On perusal of the evidence of RW1 & RW2, Ex.R1 to Ex.R.6 and FIR the Tribunal has come to the conclusion that the driver of the 6th respondent's vehicle drove the vehicle in a rash and negligent manner and caused the accident and as a result the deceased Mani @ Subramani died due to head injury. By evidence of PW2 it is also proved beyond doubt that the deceased Mani @ Subramani had travelled in the vehicle which was involved in the accident as an owner of the goods which he purchased from the market and as owner of the vehicle he travelled in the same. In the FIR also it is mentioned that the vehicle was carrying Tamarind and proceeded towards Villupuram



and also states that PW2-Kathirvel and the deceased Mani @ Subramani belong to Villupuram and were carrying Tamarind in the vehicle and it is proved beyond doubt. The Tribunal is right in concluding that the deceased Mani @ Subramani was carrying the Tamarind bags in the vehicle owned by the 6th respondent and there is no doubt regarding the nature of the vehicle and it is a goods vehicle. In the claim petition the age of the deceased was mentioned as “43” but as per the Postmortem report it was mentioned as “48” and the deceased was doing Tamarind business and also working as coolie on daily wages. In the claim petition the income of the deceased was mentioned as Rs.15,000/-per month but no documentary proof was submitted in support of the same. Hence the Tribunal assumed that the deceased would have earned Rs.200/- per day and decided to fix Rs.150/- as his income per day. Hence the annual income of the deceased was arrived as Rs.150x30x12 = Rs.54,000/- by the Tribunal. The multiplier applied for the person of 48 years is “13” as per the judgment of the Hon'ble Apex Court in ***Sarla Verma Vs Delhi Transport Corporation*** reported in 2009 (2) TNMAC (1) SC. There were five persons who were taken care by the deceased hence the Tribunal has rightly deducted 1/4th portion as his personal expenses. The award of compensation under various heads is just and proper and it does not warrant



any interference by this Court.

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11. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 2 to 5 are permitted to withdraw their share of the award amount along with proportionate interests and costs, on the basis of apportionment fixed by the Tribunal, less the amount if any, already withdrawn. In regard to the share of the first respondent the same shall be equally shared to the respondents 2 to 4 herein. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

1. The Special District Judge,
Villupuram.
2. The Section Officer
VR Section.



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J. SATHYA NARAYANA PRASAD, J.

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