



C.M.A.No.619 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.619 of 2020

1.R.Vijaya

2.R.Rajendran

... Appellants /Petitioners

vs.

1.P.Sukumar

2.The Oriental Insurance Co. Ltd.,

No.130, New No.238, Angappa

Naicken Street, Chennai-600 001.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.2810 of 2003 dated 17th day of December 2015 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court at Chennai.

For Appellants : Mr.S.N.Narasimhulu

For 1st respondent : Notice served – No Appearance

For 2nd respondent : Mr.P.Kandasamy

JUDGMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal / VI Small Causes Court at Chennai, dated 17.12.2015 in



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M.C.O.P.No.2810 of 2003, the claimants who are the parents of the deceased Pradeep have filed this Civil Miscellaneous Appeal challenging the liability.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, 1988 and Rule 3 of Motor Accident Claims Tribunal Rules claiming compensation of Rs.3,00,000/- for the death of their son, who died in the road accident that took place on 30.05.2002.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence has passed an award for a sum of Rs.3,30,000/- with interest at 7.5% per annum from the date of numbering of petition till the date of deposit fastening the liability only on the 1st respondent alone. Against which the present appeal.

4. The learned counsel appearing for the appellants/claimants would strenuously contend that the deceased was working under the 1st respondent as a loadman and earning a sum of Rs.5,000/- p.m. But the Tribunal fixed the income of the deceased at Rs.3,000/- p.m., is less. The multiplier adopted by the Tribunal is incorrect. It is his further argument that the Tribunal has come to the conclusion that the deceased travelled as



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gratuitous passenger is totally not correct. It was further contended that the insurance policy was alive for the erred vehicle but the liability was saddled on the 1st respondent namely owner of the vehicle is against law. The amounts awarded for loss of love and affection is insufficient and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the Insurance Company Mr.P.Kandasamy would vehemently argue that the deceased who was a gratuitous passenger is not covered under the policy. Therefore, the insurance company is not liable to pay any compensation for the death of gratuitous passenger travelled in a goods career. As the policy conditions were violated by allowing gratuitous passenger to travel in the goods career, the insurance company is not at all liable to pay compensation.

6. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

7. At trial, the mother of the deceased Tmt.Vijaya and one Tmt.Indhira (ocular witness) have been examined as PW1 and PW2. Exs.P1 to P4 have been marked. English translation copy of F.I.R., and



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Post-mortem Certificate of the deceased Pradeep are Exs.P2 and P3. On the side of the Insurance Company, Staff of the 2nd respondent/Insurance Company one Mr.Babu (Senior Assistant) was examined as RW1 and through him, Exs.R1 to R4 have been marked. Copy of the insurance policy pertaining to goods carrier is Ex.R1.

8. It is the evidence of PW2 ocular witness Tmt.Indhira that on 30.05.2002, she along with three other load men including the deceased Pradeep, while they were travelling in a mini lorry bearing Reg.No.TN-01-T-4066 from Chennai to Andhra Pradesh along the N.H.5 near Ulapaadu, the driver of the mini lorry drove the vehicle in a rash and negligent manner and at a high speed hit on the tree. Eventually, the mini lorry capsized and the said Pradeep succumbed to the injuries, is not in dispute.

9. On perusal of Ex.P2 translated copy of F.I.R., in English that on 30.05.2002, at about 9.30 p.m., fish merchant by name Umasankar S/o.Sathyanarayanan of Chindadripet, Madras had lodged a complaint stating that on 30.05.2002, he along with his friends were travelling in the mini lorry bearing Reg.No.TN-01-T-4066 along with the driver Mr.M.Jayaraman, in order to attend marriage of his friend at Chirala,



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Andhra Pradesh, at Ulapaadu, as the driver not being able to control the mini lorry and due to high speed and negligent driving, hit on the tree on the eastern side of the road and he along with Rajini, Santhose, Indira, Venugopal, Vasantha, Saranya, Rani and the other coolies in the said mini lorry sustained injuries and one Pradeep S/o.Rajendran died on the spot.

10. More so, it is the evidence of PW2, Indhira ocular witness that she was travelling as a coolie for the purpose of loading and unloading the fish in Andhra Pradesh, she along with three other persons travelled in the above said mini lorry and because of rash and negligent driving of the driver of the mini lorry, hit on the tree and mini lorry capsized and all of them sustained injuries and Pradeep, S/o.Rajendran died. The ocular witness and in the F.I.R., it is claimed that the deceased and the other persons travelled in the mini lorry for the purpose of loading and unloading the fish. But, the learned counsel appearing for the Insurance Company would vehemently contend that the said details are totally incorrect and the deceased and the other injured persons travelled in the vehicle in order to attend marriage function and they have to be considered as a gratuitous passengers.



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11. The crucial question is in what capacity the deceased travelled in the mini lorry is to be seen. The F.I.R., reads that they were taken to Andhra Pradesh as coolies.

12. Contending contra, on behalf of the insurance company, the learned counsel for the insurance company contended that more than 10 persons travelled in the mini lorry in order to attend marriage which is a clear violation of policy conditions. In order to prove the same, the staff of Insurance Company (Mr.Babu-Senior Assistant) has been examined as RW1 and Copy of death certificate of Pradeep and the wound certificate of 16 persons who are aged about 12 years to 42 years were marked as Ex.R3 series.

13. It is believable if one or two persons travelled in the vehicle but as many as about 18 persons suffered injury due to the accident and two persons died. Therefore, the deceased and the injured persons travelled in the mini lorry as loadmen is totally incorrect and it is rejected. It could be seen from the copy of the wound certificate that a 12 year old minor J.Saranya travelled in the mini lorry and sustained injury due to the accident. Therefore, it is made clear that all the injured and the deceased



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while travelling to Andhra Pradesh from Chennai in order to attend some function, these persons travelled in a mini lorry from Chennai to Andhra Pradesh on the way due to rash and negligent driving of the driver of the mini lorry, the accident had happened.

14. The Insurance Policy was marked as Ex.R1. On perusal of Ex.R1, the policy is a package policy. In the premium, for basic liability to public an amount of Rs.2,779/- was collected. For two non-employees, for paid drivers / for 6 workmen, an amount of Rs.100/- and Rs.90/- were collected. For third party coverage, an amount of Rs.75/- was collected. Though it was projected by the claimants that the deceased travelled in the goods career vehicle as a loadman in order to unload fish, he travelled from Chennai to Andhra Pradesh, these details are belied by the contents of the F.I.R., and the wound certificate of 16 persons - Ex.R3 series. For loading and unloading, minors will not be employed. The number of persons injured will show a clear indication that all of them travelled for attending a function.

15. The vehicle is a goods career commercial vehicle, therefore, the owner is only permitted to carry goods with limited persons as specified in the registration certificate. It is the evidence of RW1 Tvl.Babu, staff of



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Insurance Company that as per the records available, the vehicle No.TN-01-T-4066 is insured as goods career. The owner/insured(R1) is required to ply the goods carriage vehicle with the permit issued by R.T.O. It is his further evidence that the said vehicle took the persons for marriage function about 30 persons including minors from Chennai to Chirala, Andhra Pradesh and got involved in the accident on 30.05.2002 at about 8 p.m., at NH road in between 255/2 and 258/4 kms, in the result, one person by name R.Pradeep died and about 20 persons got injured. Copy of the charge sheet is Ex.R2 which confirms the fact that some 20 persons travelled in the said goods carriage vehicle and met with an accident as aforementioned and one Pradeep died and 16 persons injured and their wound certificate is Ex.R3 series. Therefore, no doubt, the passengers have to be termed as unauthorised passengers. So it is made clear that the owner of the 1st respondent's vehicle has plied his vehicle in violation of the permit, thereby violated the conditions of the Policy. Therefore, the Tribunal has absolved the Insurance Company from liability cannot be found fault with.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree passed by the Motor Accident Claims Tribunal, VI



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Small Causes Court at Chennai in M.C.O.P.No.2810 of 2003 dated
17.12.2015 is confirmed. No costs.

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
VI Small Causes Court at Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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