



C.M.A.No.1382 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2023

CORAM:

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Civil Miscellaneous Appeal No.1382 of 2021
and C.M.P.No.7104 of 2021

The Divisional Manager,
The New India Assurance Co. Ltd.,
Motor Third Party Claim Office,
No.1, Officers Line, CSI Building,
2nd Floor, Vellore.

... Appellant /2nd Respondent

..Vs..

1. Indirani	... 1st Respondent / 1st Petitioner
2. Minor J.Visali	... 2nd Respondent/ 2nd Petitioner
3. Minor J.Boomitha	... 3rd Respondent / 3rd Petitioner
4. E.Sakunthala	... 4th Respondent / 4th Petitioner
5. P.Elumalai	... 5th Respondent / 5th Petitioner
6. K.Suresh	... 6th Respondent / 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the Judgment and decree dated 27.4.2019 made in M.C.O.P.No.812 of 2016
on the file of the Motor Accident Claims Tribunal (Additional District Judge), (Fast
Track Court), Kanchipuram.

For Appellant : Mr.M.Krishnamurthy
For Respondents 1,4 & 5 : Mr.Varadha Kamaraj
For Respondents 2 & 3 : Minors
For Respondent No.6 : No appearance



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JUDGMENT

(Judgment of the Court was made by **D.KRISHNAKUMAR, J.**)

The Insurance Company/Second respondent in M.C.O.P.No.812 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court), Kanchipuram has filed the instant appeal as against the award passed by the Tribunal, challenging the liability.

2. According to the appellant, respondents/claimants have filed the claim petition for the death of the deceased person viz., E.Janarthanan on 16.6.2016 at about 7.40 p.m. when he was travelling in Eicher lorry bearing Registration No.TN-25-E-7347 towards Irungattukottai to Ocheri, Chennai at Vellore National Highway road, when the vehicle going opposite to Vedal HP petrol bunk, Chennai to Vellore National Highway road, the 1st respondent vehicle driver drove the vehicle in a rash and negligent manner without following traffic rules, the aforesaid lorry caused obstruction on the left side of the road which leads to accident and in the sudden impact, the deceased sustained fatal injuries and died on the spot. Therefore, the dependents have filed the M.C.O.P. No. 812 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court), Kanchipuram claiming compensation of Rs.25,00,000/-.



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3. On the other hand, appellant/Insurance Company resisted the claim of the petitioners stating that the deceased was an unauthorized passenger in a goods vehicle and therefore, the liability cannot be fastened as against Insurance company. The claim of compensation and interest are highly excessive. Therefore, claim petition is liable to be dismissed.

4. In support of the claim, P.W.1 to P.W.3 were examined and Ex.P1 to P12 were marked on the side of the respondents/claimants. On the side of the appellant Insurance Company, R.W.1 was examined and no documents were marked.

5. The tribunal upon perusing the records and arguments advanced by both sides, awarded a sum of Rs.24,06,412/- as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of claim petition till deposit. Aggrieved by this, the Insurance Company is on appeal.

6. In the appeal, the appellant has raised the following grounds;

The owner of the offending vehicle viz., Eicher lorry TN.25-E-7347 insured with the appellant, as the claimant was travelling as unauthorized passenger in the goods vehicle and in the policy, the liability is covered only as



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against the third party alone not a passenger. The unauthorized passenger is not permitted to travel in the goods vehicle and therefore, not covered under the policy of the vehicle. Without considering the said legal aspects involved in the claim petition, tribunal has determined the compensation fixing the liability as against the Insurance Company. On this score, the award passed by the tribunal is liable to be set aside.

7. The learned counsel appearing for the respondents / claimants has stated that based on the evidence of Ex.P3 which shows that the seating capacity of the offending vehicle is two including the driver. The appellant/ Insurance Company has not adduced any evidence to show that the deceased was travelling on the backside of the vehicle along with the goods. Therefore, the tribunal has rightly rejected the contention of the Insurance Company that the deceased was travelled in the offending vehicle as unauthorized passenger. Further, according to the learned counsel appearing for the respondents/ claimants, as per the evidence adduced by P.W.3, the deceased was sitting front side of the occupant room. Therefore, liability is fastened as against the Insurance Company and as such, no warrants to interfere with the award of the tribunal.



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8 Heard the learned counsel appearing for the appellant/Insurance Company, learned counsel appearing for the claimants/respondents and perused the materials available on record.

9. Admittedly, the deceased was travelled in a goods vehicle and the policy is covered only as against the third party. A person who had been travelled unauthorisedly in a lorry which is a goods vehicle, will not cover under policy of the said vehicle under Sec.147 of M.V. Act. According to the appellant, the issue was already settled by the Hon'ble Supreme Court in various cases that the Insurer is not liable to pay compensation when the deceased was unauthorizedly travelled in a goods vehicle.

10 The learned counsel appearing for the respondents/claimants relied upon the decision of the Hon'ble Supreme Court reported in **2022 (2) TN MAC 593 (SC) [Balu Krishna Chavan vs. Reliance General Insurance Co. Ltd. & others]** wherein it is held as under:

*"9. In the instant case, the appellant has relied on the judgment 3 dated 21.02.2017 passed by this Court in Civil Appeal No(s).3047 of 2017 titled as **"Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors"**. In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that*



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normally, there would be no order to “pay and recover”. However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a ‘gratuitous passenger’ and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.

10. Therefore, on the legal aspect, it is clear that in all cases such order of “pay and recover” would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.

In the aforesaid decision, the Hon'ble Supreme Court has held that in all cases, the order of pay and recovery would not arise, when the Insurance Company is not liable to pay, however, in the facts and circumstances, it is stated that in the interest of justice, the Hon'ble Supreme Court has directed the Insurance Company to deposit the compensation amount before the tribunal. Since the legal principles have been laid down by the Hon'ble Supreme Court, there is no Pay and recovery as has been ordered and no liability as against the Insurance Company.

11. In the light of the decision of the Hon'ble Supreme Court, we are of the view that award passed by the tribunal is liable to be set aside as against the Insurance Company alone. The owner of the vehicle has not preferred appeal,



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we are not going to interfere with the award. Insofar as the quantum of compensation, since no appeal is preferred by the respondent/owner of the vehicle, it is open to the claimants/ respondents 1 to 5 to proceed as against the 6th respondent for recovery of compensation.

12. With the above liberty, Civil Miscellaneous appeal is allowed. No costs. The impugned order is set aside insofar as the liability of the appellant is concerned and in other aspects, the order of the tribunal is confirmed. Connected miscellaneous petition is closed.

(D.K.K.J. K.G.T.J.)
30.03.2023

Speaking/Non Speaking order

Index: Yes/No

Internet: Yes/No

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To

1. The Additional District Judge, Fast Track Court, (Motor Accidents Claims Tribunal) Kanchipuram.
2. The Divisional Manager, The New India Assurance Co. Ltd., Motor Third Party Claim Office, No.1, Officers Line, CSI Building, 2nd Floor, Vellore.
3. The Section Officer, V.R.Section, Madras High Court, Chennai-104.



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