



C.M.A.No.222 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.222 of 2018

and

C.M.P.No.2542 of 2018

Shriram General Insurance Co.Ltd,
E-8, EPIP, RIICO, Sitapura,
Jaipur – 302 022.

... Appellant

Vs.

1. M.Kannammal
2. M.Sathya
3. M.Devika
4. M.Balasubramaniam
5. K.Mariyayee
6. M.Kandasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the decree and Award dated 21st day of June 2017 made in M.C.O.P.No.497 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Notice served on respondents
No appearance



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the decree and Award dated 21.06.2017 passed in M.C.O.P.No.497 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal.

2. Case of the claimants is that on 24.12.2012 at 12.20 pm, when the deceased was travelling as load man in TATA ACE bearing Registration No.TN.37-AS-0203, driven by its driver in a rash and negligent manner and applied brake, in order to avoid collision of a pedestrian, due to which, the deceased fell down from the vehicle and sustained multiple grievous injuries and later, he succumbed to death.

3. The appellant/Insurance company filed this Civil Miscellaneous appeal challenging the Award passed by the Tribunal. The respondents 1to 5 are the claimants in M.C.O.P.No.497 of 2013 who have filed the claim petition on the file of the Motor Accidents Claims Tribunal, (Principal District Court, Namakkal.



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4. The learned counsel for the appellant/Insurance company submitted that the deceased was travelling as a load man and he was sitting on the top of the coconut palm load in TATA ACE bearing Registration No.TN.37-AS-0203. Generally, the load men are permitted to sit only in the cabin of the said vehicle. The Tribunal failed to appreciate that the deceased did not travel inside the vehicle. Further, the policy is not covered for the load man who was sitting on top of the load vehicle. Since the deceased travelled in TATA ACE on the top of the load, it can be stated that there is violation of policy. Hence the appellant/Insurance Company is not liable to pay any compensation to the claimants. If the vehicle is used for travelling, either the traveller or the load man are permitted to sit only in the cabin and not on the top of the vehicle. Hence, the driver of the vehicle was not responsible for the accident and the appellant/Insurance Company is not liable to pay compensation.

5. Heard the learned counsel for the appellant and perused the materials available on record.



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6. The manner of the accident is not in dispute. At the time of accident, the offending vehicle was insured with the appellant/Insurance Company which is also not in dispute. Further, at the time of accident, the deceased was travelling in the vehicle which is also not in dispute. The claimants have not filed any appeal challenging the quantum of compensation and also fixation of contributory negligence at the rate of 50% on the part of the deceased. The appellant/Insurance Company has filed this appeal challenging the Award passed by the Tribunal. Admittedly, the deceased was travelling in the goods vehicle. The owner of the vehicle who is the sixth respondent herein, allowed the deceased to travel in the offending vehicle. In order to avoid collision of a pedestrian, the driver of the offending vehicle applied brake, due to which the deceased who was sitting on the top of the load, fell down from the vehicle and sustained multiple grievous injuries and later, he succumbed to death. The deceased is a third party and also a load man. The claimants are the legal representatives of the deceased. Since at the time of accident, the offending vehicle was insured with the appellant/Insurance Company, the appellant is liable to pay



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compensation. The Tribunal has rightly awarded the compensation and also directed the appellant/Insurance Company to recover the same from the owner of the offending vehicle ie., the sixth respondent herein, for violation of policy. Further, the Tribunal has rightly fixed the contributory negligence to the extent of 50% on the part of the deceased and 50% of negligence on the part of the driver of the sixth respondent's vehicle. There is no error in the Award passed by the Tribunal warranting interference by this Court. This Court finds that there is no merit in the appeal and the same is liable to be dismissed.

7. Accordingly, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Principal District Court,
Namakkal.
2. The Section Officer,
VR Section,
High Court, Chennai.



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P.VELMURUGAN, J.

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