IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.3419 of 2014

and M.P.No.1 of 2014

1. Chinnammal
2. N.Manjula
3. M.Nirmala
4. M.Seenivasan
5. Minor M.Venkatesan

S/o.Late Munisamy

Rep. By its mother and natural guardian

the first appellant .. Appellants/Petitioners

Vs.

1. S.Padma
2. United India Insurance Company Ltd.,

Rep. By its Branch Manager,

Branch Office,

No.10, Raji Building, 5th Floor,

Anna Salai, Chennai-6. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 22.02.2010 made in MCOP.No.2266 of 2003 on the file of the Motor Accident Claim Tribunal, Principal District Court, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For Respondents : Mr.I.Malar R2

R1 No appearance

J U D G M E N T

This appeal has been filed by the appellants/claimants against the decree and judgment dated 22.02.2010 made in MCOP.No.2266 of 2003 on the file of the Motor Accident Claim Tribunal, Principal District Court, Krishnagiri.

2. The brief facts of the case are as hereunder :-

On 22.06.2003, the deceased Munisamy was travelling in a tempo from Kancheepuram to Chennai for selling coconut in a tempo bearing Registration No.TN 04 9985 which was owned by the first respondent and insured with the second respondent. When the vehicle was running near the Jurisdiction of Kancheepuram Taluk Police Station, the vehicle dashed into a sand dune as the driver driven the vehicle in a rash and negligent manner due to which the vehicle was overturned. As a result of the accident, driver, cleaner and the said Munisamy died. Alleging that the accident was due to negligent driving of the driver of the tempo van, the appellants/claimants have filed a claim Petition before the Motor Accidents Claims Tribunal, Krishnagiri under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.7,50,000/- against the owner of the vehicle and its insurer and the same was taken on file in MCOP. No.2266 of 2003.

3. Before the Tribunal, during trial, in order to prove the case of the claimants, they have examined three witnesses viz., P.W.1 to P.W.3 and marked eight documents viz., Exs.P1 to P8. On the side of the respondents, one witness was examined and one document was marked. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to negligent driving of the driver of the tempo van, the Tribunal held that the first respondent is only liable to compensate the claimants. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.3,47, 000/- as compensation to the claimants with interest at the rate of 6% per annum from the date of petition till the date of realization.

4. Aggrieved by the said award dated 22.02.2010, the appellants/claimants have filed this appeal before this Court for fixing the liability against the insurance company.

5.The learned counsel appearing for the appellants/claimants submitted as per Section 147 of MV. Act, the owner of the good is entitled to travel along with the goods. If any accident occurs, the insurance company is liable to pay the compensation to the dependants of the deceased. In the present case, without considering the said section, the Tribunal had mechanically dismissed the claim petition as against the insurance company and fixed the responsibility against the owner of the vehicle, which is not sustainable one.

6. The learned counsel for the second respondent Insurance Company would submit that the Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, held that it is not clear from evidence whether the deceased and others travelled as owner of goods or as passengers. In view of such finding, the Tribunal exonerated the second respondent Insurance Company and directed the first respondent to pay the compensation arrived at.

7. Heard the learned counsel for the appellants/claimants as well as the learned counsel for the respondent/Insurance Company and also perused the materials available on record.

8. From the materials on record, it is seen that the first respondent claims that on 22.06.2003 while her husband was travelling in the tempo, which was owned by the first respondent along with the goods, the 1st Respondent's husband died due to the rash and negligent driving of the tempo van. On perusal of the witness of the PW2, it is seen that the deceased is the owner of the goods and he was travelling with his goods in vehicle which was owned by the first respondent whereas the respondents have not produced any contra evidence.

9. As per Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, the driver, cleaner, employees of insurer and owner of goods or authorized representatives of owner of goods are covered by policy. There is no necessity to pay additional premium to cover the owner of the goods or his authorized representatives. For better appreciation, the said Section is

extracted hereunder:

> *" Section 147(1)(i) provides that in order to comply with the requirements of the said Chapter, an insurance policy would cover any liability incurred by the insured in respect of the death of or bodily injury to any person, including owner of the goods etc. .... The insurer can and may contract to cover risks and liabilities which he is not bound to under the Act. To put it in other words, he can expand his net of coverage far beyond the statute-imposed limits, but he cannot restrict his net of coverage contrary to the statute. ....."*

10. In view of the above, this Court held that as per Section 147(1) of the Motor Vehicles Act, the owner or authorized 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 C.M.A.No.2825 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. In view of the deposition of the PW2, the deceased is the owner of the goods and therefore, the second respondent Insurance Company is not liable to pay compensation, is without merits.

11. The Tribunal has failed to consider Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules. As per the above provision, the owner of 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.

12. For the above reason, the award of the Tribunal exonerating the second respondent Insurance Company is set aside. The second respondent Insurance Company is liable to pay compensation to the appellants.

13. The second respondent Insurance Company is directed to deposit the amount now modified by this Court with interest @ 7.5% p.a., from the date of petition till the date of deposit within four weeks from the date of receipt of a copy of this Judgment.

14. With the above modification, the appeal is allowed and the second respondent is directed to deposit the compensation awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of petition to

till the date of realization within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. No costs. Consequently. Connected miscellaneous petition is also closed.

09.10.2023

Index : Yes / No
Speaking Order : Yes/ No
rli

<u>M.DHANDAPANI.,J.</u>

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To

The Motor Accident Claims Tribunal, Krishnagiri

<u>C.M.A.No.3419 of 2014</u>

09.10.2023