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C.M.A No.650 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.650 of 2022
and C.M.P.No.4621 of 2022

The New India Assurance Co. Ltd.,
No.1, Bharathi Road, Arcot Woodlands Building,
Cuddalore.

... Appellant

Vs.

1.S.Balamurugan

2.Minor S.Sasidhar
(Minor rep. by his guardian
N/F father S.Balamurugan)

3.P.Vadamalai

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the judgment and decree made in MCOP.No.2412 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore dated 26.08.2019.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.Ramya V.Rao for R1 to R3



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JUDGMENT

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Kandamangalam road. A goods carrier bearing Regn.No.TN-31-BS-0149
carrying 20 passengers capsized. One of those passengers was killed
whose heirs preferred M.C.O.P.No.2412 of 2015, seeking compensation
against the owner and insurance company of the goods carrier in
question. The Tribunal had found that the vehicle was a goods carrier and
also found that the victim was a gratuitous passenger and then
determined the compensation payable at Rs.10,22,000/- and fastened the
liability jointly on the owner and the insurance company of the vehicle. It
also directed the insurance company to pay and recover the
compensation. This is under challenge.

2.Learned counsel for the appellant / insurance company contended that
even in the F.I.R registered at the instance of one of the passengers who
was traveling in the goods carrier at the relevant time, all the passengers,
who were then traveling, were returning after participating in a
condolence. This implies that they are not load men accompanying good
but are mere gratuitous passengers. There is no insurance cover for
these gratuitous passengers. Therefore, in fitness of things, the Tribunal



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ought to have directed the owner to pay the entire compensation and the award to the extent to the insurance company to pay and recover is erroneous.

3.Ms.Ramya V.Rao, learned counsel appearing for respondents 1 to 3, submitted that the entire case narrates the involvement of a motorcycle bearing Registration No.PY-01-BB-9288, suddenly appearing before the goods carrier, and to avoid a collusion with that motorcycle, the driver of the goods carrier applied a sudden break, which resulted in the accident. In the eventuality of this Court allowing this appeal, the claimants may be permitted to proceed against the other offending motorcycle against whom the FIR has been registered.

4.The learned counsel for the appellant would now intervene to share information that *vis-a-vis* the claims of others who traveled along with the respondents in this case, their claims were settled only by the insurance company of the motorcycle that was responsible for the occurrence of the accident.



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N.SESHASAYEE, J.

Anu

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5.This Court has little hesitation in allowing this appeal since the claimants have traveled only as a gratuitous passenger. The claimants, however, is at liberty to prefer a fresh claim against the owner of the motorcycle bearing No.PY 01 BB 9288 within the framework of law.

6.In conclusion, this appeal stands allowed, and the award passed by the Tribunal is set aside. This Court is informed that the insurance company has deposited 50% of the amount awarded by the Tribunal. The appellant is now at liberty to withdraw the same. No Costs. Consequently, connected miscellaneous petition is closed.

22.11.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accidents Claims Tribunal
(Principal District Judge), Cuddalore.

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and C.M.P.No.4621 of 2022