IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3145 of 2017

1.Santhi
2.Punitha
3.Minor Prema
4.Minor Dhanalakshmi
5.Kaliyannagounder
6.Alamelu .Appellants

Versus

1.M.Veeramani

2.The Branch Manager,
Reliance General Insurance Company Ltd.,
No.73, 1st Floor, Officer Lane,
Vellore – 632 001 ..Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 02.11.2015 made in M.C.O.P.No.121 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Court), Krishnagiri.

For Appellant : Mr.S.Ramprabu
for Mr.S.P.Yuaraj
For Respondents : Notice dispensed with for R1
Mr.S.Arunkumar for R2

J U D G M E N T

This appeal has been filed by the appellants/claimants seeking enhancement of compensation as against the impugned award dated

02.11.2015 in M.C.O.P.No.121 of 2014 passed by the Motor Accidents Claims Tribunal, (Special District Judge, Krishnagiri).

2. The facts of the case briefly are as under:

On 07.05.2013 at about 02.00 hours, when the deceased-Selvaraj travelling along with goods/plantain in Tata 909 Tempo bearing registration No.TN-39-AB-8203, proceeding from Kurumberi to Bangalore, it overturned due to rash and negligent driving of the driver of the Tempo. Due to the vehicle capsized, Selvaraj died after sustaining fatal injuries on the spot. In view of the fatal accident, his legal heirs have filed claim petition in M.C.O.P.No.121 of 2014 seeking for compensation of Rs.20,00,000/- before the Tribunal. After trial, the claimants were awarded a sum of Rs.15,90,000/- as compensation directing the first respondent to deposit the compensation to the claimants. Being aggrieved over the quantum of compensation, the appellants/claimants has filed the present appeal.

3. The learned counsel for the appellants would submit that the Tribunal has failed to note that the deceased is a banana merchant and was earning Rs.15000/- p.m.,but the Tribunal has awarded lesser compensation. It

also failed to consider future prospectus. It failed to note the age of the deceased was 42 years and he was the sole bread winner of the family. It has fastened the liability on the first respondent because the deceased has travelled as the owner of the goods and ought to have awarded pay and recovery. It has failed to note that the death is not instantaneous one and hence the pain and sufferings to the family should be considered reasonably. Further, the legal heirs of the deceased were wife, children and parents of the deceased who were taken care by the deceased only. Since they are depending on the income of the deceased, they cannot manage to tackle their immediate requirements.

4. On the contrary, the learned counsel for the second respondent/Insurance Company has submitted that it is for the claimants to prove the valid insurance, RC, DL, permit and FC of the vehicle involved in the alleged accident. He further submitted that the deceased travelled as an unauthorised passenger in a goods vehicle which is in total contravention of the MV Act. He further submitted that this second respondent has no statutory liability to cover the risk of passenger in the vehicle and to pay compensation to persons travelling in goods vehicle as per *Supreme Court*

Judgment in 2005 ACJ (2) page 721. The police and owner of the vehicle had failed to intimate about the accident and vehicles involved and other details as per the mandatory provision of Section 158 (6) and Section 134 of MV Act to the second respondent. He denied the age occupation and monthly income of the deceased. He further submitted that the amount of compensation claimed under various heads are highly excessive and disproportionate. He denied that the accident occurred due to the rash and negligent driving of the vehicle belonging to the first respondent. He further submitted that in a goods vehicle, no person is authorised to travel with the goods as per the policy conditions. But in this case the deceased along with other has travelled as unauthorised passengers. They both are treated as unauthorised passengers and their risk is not covered by the policy. Since the owner of the offending vehicle has violated policy condition only when the goods alone are allowed to travel in the said vehicle. He further submitted that the unauthorised passenger in the goods vehicle travelling on the goods instead of cabin is not entitled for compensation and the Insurance Company is not liable to indemnity the owner of the vehicle who has permitted the unauthorised passenger to travel on the goods instead of cabin. In view of that the accident had occurred due to the rash and negligent driving of the offending vehicle and the violation of the Insurance policy on the side of the owner of the vehicle, the Tribunal has imposed liability on the owner of the vehicle to pay compensation to the claimants. The Tribunal has rightly awarded a reasonable compensation. However, the first respondent being directed to pay the compensation to the claimants, is not sustainable and hence the same is liable to be quashed.

5. Heard both sides and perused the entire documents produced before this Court.

6. Before the Tribunal, two witnesses were examined as PW1 and PW2 and 8 documents were marked as Ex.P1 to Ex.P8. The second respondent examined one witness and marked one document Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the driver of the Tata 909 Tempo bearing registration No.TN-39-AB-8203, belonging to the 1st respondent and hence, directed the first respondent to pay a sum of Rs.15,90,000/- to the claimants.

8. On perusal of the entire records, it is seen that the deceased is stated to have travelled in Tata 909 Tempo bearing registration No.TN-39-AB-8203, proceeding from Kurumberi to Bangalore, it overturned due to rash and negligent driving of the driver. Further, the said vehicle is a goods carrier vehicle and the vehicle is not to be allowed to carry passengers according to the policy condition. Whereas the driver of the vehicle has allowed two persons on the aforesaid vehicle to be travelled which is meant to carry goods material and commercial purpose. In view of the aforesaid facts, the Tribunal has confirmed that the owner of the vehicle has violated policy condition and has not paid any additional premium to carry the passengers and the same is established by the Tribunal through Ex.R1 and corroborating with oral evidence of P.W.2. After considering the aforesaid all aspects, the Tribunal has fixed the liability on the owner of the offending vehicle stating that the owner of the vehicle is alone liable to pay the compensation for breach of policy condition.

9. After considering the aforesaid fact and circumstances of the case, there is no doubt that the owner of the vehicle, has violated the policy condition. In this case, the deceased person and the injured person after

loading the plantain, travelled on the top of the goods to unload the same. As the findings recorded by the Tribunal are acceptable and reasonable, this Court is not inclined to interfere with award passed by the Tribunal. Hence, the first respondent is directed to deposit the amount of the compensation of Rs.15,90,000/- together with interest @ 7.5% p.a., less already deposited if any, from the date of petition till the date of deposit within a period of four weeks from the date of receipt of copy of this order. The appellants 1, 2, 5 and 6 are permitted to withdraw their respective shares as per the proportion directed by the Tribunal and the share of the minor appellants 3 and 4 are directed to be deposited in anyone of the nationalised banks till they attain the age of majority. After attaining the age of majority, they are permitted to withdraw their respective shares on production of age proof certificate before the Tribunal.

10. In the result, the Civil Miscellaneous petition is dismissed and award passed by the Tribunal in M.C.O.P.No.121 of 2014 is confirmed. There shall be no order as to costs.

07.02.2023

Index:Yes/No
Internet: Yes/no
gv

A.A.NAKKIRAN.,J.
Gv

To

1.The Motor Accident Claims Tribunal
(Special District Court), Krishnagiri.

2.The Section Officer,
V.R.Section, High Court, Madras.

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