IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 2221 of 2019

Rani (Died)
1.Suresh
2.Minor.Mohan Dass
(Minor Rep.by Mother/Guardian Rani)

[2nd appellant declared as major and her mother
Rani discharged from the guardianship vide
Court order dated 13.03.2018 made in
C.M.P.No.1168/2018 in C.M.A.Sr.No.101787/2017] ... Appellants

Vs.

1.Balaji

2.The Branch Manager,
The New India Assurance Co.Ltd.,
Government Hospital Road, Near State Bank,
Gobichettipalayam Town,
Gobi Taluk, Erode District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.03.2017 made in M.C.O.P.No.177 of 2015 on the file of the MACT/III

Additional District-cum-Sessions Court, Gobichettipalayam.

For Appellants : Mr.MA.P.Thangavel

For Respondents : No appearance for R1
Ms.S.R.Sumathy for R2

JUDGMENT

The claimants are the appellants before this Court and the Award and decree passed in M.C.O.P.No.177 of 2015 on the file of the Motor Accident Claims Tribunal/III Additional District-cum-Sessions Court, Gobichettipalayam, is under challenge in this present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The first claimant is the wife and claimants 2 and 3 are the sons of the deceased Subramaniam. The case of the claimants/appellants before the Tribunal was that on 28.08.2013, the deceased Subramaniam and one Premkumar travelled in a Minidor Tempo bearing Registration No.TN-

33-AZ-0367 along with the plantain trees. They were nearing Indira Nagar Pillaiyar Koil at Vellangkoil-Polavakalipalayam Thar road at about 12.00 p.m, and the first respondent/owner-cum-driver, who drove the Minidor Tempo in a rash and negligent manner, turned the vehicle in a speedy manner and that the vehicle got capsized on the left side. Due to the said impact, the deceased Subramaniam fell underneath the said vehicle and sustained grievous injuries all over the body including head injury. Immediately, he was taken to S.K.Hospital for treatment and subsequently, he died due to the accidental injuries. Seeking compensation against the owner of the Minidor Tempo and its insurer M/s.New India Assurance Co.Ltd., the legal heirs of the deceased filed the claim petition claiming compensation of Rs.20,00,000/-.

4. The first respondent, who is owner-cum-driver of the said Minidor Tempo remained *ex-parte* before the Tribunal.

5. The claim petition was contested by the Insurance Company on various grounds and specifically stated that the policy taken by the first

respondent in respect of the vehicle bearing Registration No.TN-33-AZ-0367 is an 'Act Policy' and it covers only for third parties and not the persons travelling in the vehicle. The Minidor Tempo is a goods carrying vehicle and the first respondent violated the policy conditions by carrying passengers. The deceased travelled in the said vehicle as a gratuitous passenger and hence, the Insurance Company is not liable to pay compensation. That apart, they had disputed the other claims made in the claim petition.

6. To substantiate the case on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 18 documents were marked as Ex.P1 to Ex.P18. On the side of the Insurance Company, R.W.1 was examined and Ex.R1 was marked.

7. The Tribunal, after analysing the entire evidence, found that the accident had occurred only due to rash and negligent driving of the first respondent. The Tribunal further held that since the policy is an 'Act Policy' and it covers only to third parties, the Tribunal exonerated the Insurance

Company on the ground that the deceased was a gratuitous passenger and fixed the liability on the first respondent and awarded a sum of **Rs.10,26,660/-** as compensation. The break-up details of the compensation awarded by the Tribunal are as under :

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Loss of dependency	5,88,000
2.	Loss of Marital life of the first claimant	2,00,000
3.	Loss of love and affection of claimants 2 and 3	2,00,000
4.	Transportation Charges	5,000
5.	Funeral Expenses	10,000
6.	Medical expenses	23,652
	Total	**10,26,652**
	(rounded off)	**10,26,660**

8. Challenging the liability and quantum fixed by the Tribunal, the claimants have preferred the present appeal.

9. The learned counsel for the appellants/claimants submitted

that the first appellant (died) is the wife and appellants 2 and 3 are the sons of the deceased Subramaniam. During the pendency of the appeal, the first appellant died and her legal heirs are already on record. The deceased travelled in the first respondent's Minidor Tempo as an authorised agent of the goods and it met with the accident and hence, the second respondent/Insurance Company is liable to indemnify the owner of the said Tempo to pay the compensation amount. The Tribunal exonerated the Insurance Company on the ground that the deceased was a gratuitous passenger and since the policy is an Act Policy, it covers only third party alone. It is settled law that the owner of the goods or the representatives of the owner of the goods are covered under the policy. The Tribunal had come to the conclusion that there is no policy coverage and no premium is paid for gratuitous passengers/occupants and in respect of an 'Act Policy' the liability of the Insurance Company cannot be fixed and the Tribunal wrongly fixed the liability on the owner of the offending vehicle. He further submitted that Section 147(1) of Motor Vehicles Act, 1988 clearly says that the owner or the representatives of goods can travel along with the goods and they are covered under the policy.

10. The learned counsel for the second respondent/Insurance Company contended that it is an 'Act policy' and therefore, there is no coverage with reference to the passengers, who were travelling in the insured vehicle. There is no extra or additional premium paid by the owner of the vehicle for cleaner or any other persons. Admittedly, in the present case, insured vehicle is a Minidor Tempo and the deceased travelled in the vehicle as a gratuitous passenger and the vehicle met with the accident and hence, the policy does not cover the gratuitous passengers. The first respondent/owner-cum-driver of the said vehicle violated the policy conditions by carrying passengers and therefore, the Insurance Company is not liable to pay any compensation. The Tribunal has rightly fixed the liability on the owner of the offending vehicle and there is no merit in the appeal and the same is liable to be dismissed.

11. Heard the learned counsel for the appellants and the learned counsel for the second respondent and also perused the materials. Despite service of notice, there is no representation for the first respondent.

12. Admittedly, in the F.I.R./Ex.P1, it is specifically mentioned that on the date of accident, four persons went for cutting the plantain trees for the purpose of conducting Mariamman Temple festival held on 29.08.2013. After finishing their work, they hired the first respondent's Tempo and the deceased and another person have travelled along with the goods and two persons followed the said vehicle by two wheeler. At that time, due to the rash and negligent driving of the first respondent, the accident had occurred, and the deceased succumbed to accidental injuries. The complainant or any other independent eye witnesses had not been examined to the prove the ownership of the goods and only R.W.1/official of the Insurance Company was examined and he has spoken about the manner of accident based on the records. There is no quarrel with the proposition that the owner of the goods engaged the vehicle, he can travel along with the goods or engaged any other person to travel along with the goods. The Minidor Tempo is not a heavy duty vehicle and it is only a tricycle and as per the seating capacity of the vehicle, only 1+1 persons are permitted to travel. The complainant, who gave complaint, has stated that at the relevant point of time, in the said vehicle the driver along with two

persons travelled along with the goods and that is also one of the reason for capsizing the vehicle. The first respondent violated the policy conditions and permitted the deceased and other person to travel along with the goods as gratuitous passengers. There is no contra evidence either from the owner of vehicle or the Insurance Company to show that the deceased was travelling as owner of the goods or the authorized of the goods.

13. The only evidence available is P.W.2, who has clearly spoken that the deceased travelled in the goods vehicle as one of the agent of the goods with the consent of the driver of the vehicle. So, the deceased claimant was not unauthorized passenger. At the relevant point of time, the said vehicle was insured with the second respondent. The main defence taken by the Insurance Company is that the policy is 'Act policy' and no extra premium was paid for the gratuitous passengers. The first respondent violated the policy conditions and allowed the persons to travel along with the goods more than the seating capacity. Since there is a violation of policy conditions, the Tribunal ought to have directed the Insurance Company to pay the compensation at first instance and thereafter, permitted them to recover the same from the owner of the Minidor Tempo.

14. This Court as a final Court of fact finding, re-appreciated the entire materials and finds that the deceased is not a gratuitous passenger and he travelled as an agent of the goods and the first respondent/owner of the vehicle violated the policy conditions and permitted two persons to travel along with the goods. The said aspect has also been proved by the claimants by examining P.W.2. As an insurer, the second respondent/ Insurance Company is liable to indemnify the owner of the said Tempo to pay the compensation at the first instance and recover the same from the owner of the said vehicle, for violation of policy conditions.

15. Considering the above facts and circumstances, this Court is of the considered opinion that the findings of the Tribunal in fixing the liability on the owner of the offending vehicle are not proper. The Insurance Company is directed to pay the compensation at the first instance and recover the same from the owner of the Minidor Tempo bearing Registration No.TN-33-AZ-0367. Thus, the claimants are entitled to get compensation from the second respondent/Insurance Company.

16.The quantum of compensation awarded by the Tribunal is just and fair and hence, the same is confirmed in this appeal.

17. In the light of the above modification, this Civil Miscellaneous Appeal is allowed and the impugned Award and decree passed by the Tribunal in M.C.O.P.No.177 of 2015, is hereby set aside. There shall be no order as to costs.

18. Accordingly, the second respondent/Insurance Company is directed to deposit the total compensation of Rs.10,26,660/- along with interest at 7.5% per annum and costs before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 2 and 3 shall carry equal share in the award amount, since the first claimant died during the pendency of the appeal. The second respondent/ Insurance company is permitted to recover the compensation amount from the first respondent/owner of the Minidor Tempo, since there is a violation to the condition of the Insurance Policy.

15.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The III Additional District-cum-Sessions Court,
Motor Accident Claims Tribunal,
Gobichettipalayam.

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

P.VELMURUGAN, J.

ms

C.M.A.No.2221 of 2019

15.09.2023