IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1948 of 2019

1. Esthern Rani
2. Ananth
3. Vijay
4. Selakumar
5. Minor Jebin
6. Minor Princy
7. Arockyamery ... Appellants

Vs.

1. Sundaramoorthy

2. Oriental Insurance Co., Ltd.,
Service Vertical Centre (Old Claims)
155, Prakasam Salai
2nd Floor, Broadway,
Chennai - 600 104 ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to modify the order and decree dated 06.09.2017 made in MCOP No.446 of 2012 and direct the 2nd respondent/Insurance Company to pay compensation to the appellants first and recover the same from the 1st respondent/owner of the vehicle in MCOP No.446 of 2012, on the file of the Motor Accident Claims Tribunal, Ariyalur.

For Appellants : Mr.S.Kannan

For Respondents : Mr.M.J.Vijayaraghavan for R2
R1-Notice dispensed with by order dated 08.06.202023

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimants to modify the order and decree dated 06.09.2017 made in MCOP No.446 of 2012 and direct the 2nd respondent/Insurance Company to pay compensation to the appellants first and then to recover the same from the 1st respondent/owner of the vehicle in MCOP No.446 of 2012, on the file of the Motor Accident Claims Tribunal, Ariyalur.

2. The appellants are claimants. The 1st respondent is the owner and the 2nd respondent is the insurer of the vehicle involved in the accident namely Van bearing Regn. No.TN-09-AA-1584.

3. The case of the claimant is that on 05.08.2011 at about 11.45 p.m., when the deceased Seviyar was proceeding in Swaraj Mastha Van bearing Regn. No.TN-09-AA-1584 from Pondicherry, on the Virudhachalam - Andimadam Road, near Arulanandam Village, after purchasing tiles and paints for one Rajendran, the said Van driver who drove the vehicle in a rash and negligent manner and with high speed, capsized the Van while trying to turn the Van on seeing a Bullock Cart which was going in front of the Van.

Due to which, the deceased died on the spot.

4. The claimants who are the dependents of the deceased, had filed a claim petition in MCOP No.446 of 2012 before the Motor Accidents Claims Tribunal, Ariyalur, claiming compensation of Rs.30,00,000/- for the death of deceased Seviyar.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 8 documents were marked as Ex.P1 to Ex.P.8. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 2 documents were marked as Ex.R1 and Ex.R2.

6. Before the Tribunal, the 1st respondent/the owner of the Van, remained ex-parte.

7. The Tribunal, after hearing the submissions of the learned counsel on either side and considering the materials, awarded compensation of Rs.20,72,920/- by fixing liability on the 1st respondent/owner of the vehicle and directed the 1st respondent/owner of the vehicle to pay the said

compensation amount to the claimants with interest at 7.5% per annum from the date of claim petition i.e. 05.12.2012, till the date of realization (exclusding the period of dismissal for default if any) with costs. Further, the Tribunal dismissed the petition as against the 2nd respondent/Insurance Company.

8. Since the Tribunal instead of fixing the liability on the Insurance Company, fixed the liability on the owner of the Van, the claimants have filed the present appeal before this Court challenging the said findings.

9. The learned counsel for the appellants/claimants submitted that the deceased after purchasing tiles and paints for one Rajendran, was returning from Pondicherry along with the said Rajendran in the Van bearing Reng. No.TN-09AA-1584. On Virudhachalam-Andimadam Road, near Arulanandam Village, due to the rash and negligent driving of the driver of the said Van, they met with an accident due to which, the deceased died on the spot. The claimants are the legal heirs of the deceased namely wife/1st appellant, children/appellant 2 to 6 and mother/7th appellant. They filed a claim petition before the Tribunal and in order to substantiate the averments

made in the claim petition, one of the claimants/wife of the deceased was examined as P.W.1, an eyewitness was examined as P.W.2 who have categorically stated that at the time of accident, the deceased had travelled along with one Rajendran, for purchasing Tiles and Paints and after purchasing the same, while they were returning in the said Van, the accident had occurred. P.W.2/eyewitness has clearly spoken about the manner of accident. Though the Tribunal admitted that the accident had happened only due to the rash and negligent driving of the driver of the Van, failed to appreciate the fact that the deceased had travelled in the Van as a load man. Even assuming that there was a violation of policy condition, the Tribunal ought to have given a direction to the Insurance Company to pay the compensation at the first instance and then to recover the same from the owner at a later point of time, for violation of policy condition. Instead of ordering for pay and recovery, the Tribunal has directed the owner of the Van to pay the compensation. The learned counsel also placed reliance of the Judgments of the Hon'ble Supreme Court in ***(2017) 4 SCC 796 (Manuara Khatun and Others Vs. Rajesh Kumar Sing and Others*** *and also this Court in* ***(2020) 2 TNMAC 2017 (ICICI Lombard General Insurance Co. Ltd. Vs. Penci Kala and Others.***

10. The learned counsel further submitted that the wife of the deceased is a rustic village woman. She was examined as P.W.1 and at the time of cross examination, she stated that the deceased was not employed under Rajendran but the deceased had gone along with the Rajendran as his friend. Since she had not stated that the deceased had travelled as a load man, the Tribunal has come to the conclusion that the deceased had travelled in the Van as an unauthorized occupant. The Tribunal failed to consider the complaint given by the said Rajendran, where he himself has stated that the deceased was working as a Painter and the Rajendran had chosen him to get Tiles and Paints and after purchasing the same, the deceased had travelled along with him in the offending Van with the goods. Therefore, the findings of the Tribunal that at the time of accident the deceased had travelled in the offending vehicle as an unauthorized occupant is erroneous. The Hon'ble Supreme Court and also this Court, have time and again stated that the owner or agent of the goods, even load man and driver are entitled to get compensation at the best. If the Tribunal had found any violation of policy condition, the Tribunal ought to have ordered the Insurance Company to pay the compensation at the first instance and then to recover from the owner of the vehicle for the violation of policy. Instead of the same, the Tribunal has

fixed the liability on the owner of the vehicle. The claimants are poor and they cannot agitate with a private owner of the vehicle and get the compensation. Therefore, the Supreme Court also in the cases of this nature has held that if the vehicle is insured, then the insurance company is liable to pay the compensation at the first instance and thereafter, the insurance company can recover the same from the insure. But in this case, the Tribunal has failed to consider the said proposition and fastened the entire liability on the owner of the vehicle. Therefore, the present appeal is filed.

11. The learned counsel for the 2nd respondent/Insurance Company submitted that the insurance does not cover either the gratuitous person or unauthorized occupant. At the time of accident, the deceased had travelled in the said vehicle as an unauthorized / gratuitous person. Therefore, the insurance does not cover the deceased. The insurance covers only the owner of the goods, driver and cleaner or any other authorized agent of the goods, whereas in this case, the Rajendran/the owner himself has travelled along with the goods and there is no necessity for the deceased to travel along with the goods. Therefore, the insurance does not cover the deceased and the Insurance Company is not liable to pay the compensation and the learned counsel placed reliance of the Judgment of the Hon'ble Supreme Court in

(2008) 1 SCC 423 (National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others) and also the Division Bench of this Court in **2018 (2) TN MAC 731 (DB) (Bharati AXA General Insurance Co. Ltd., Vs. Aandi)** and ***(2017) 2 TNMAC 2014 (Branch Manager, Bajaj Allianz General Insurance Co. Ltd., Vs. Diwan Ali and other*** and submitted since because the claimants cannot recover the amount from the owner of the vehicle, it does not mean that the Insurance Company has to pay at the first instance and then to recover from the owner. Since there is no coverage under gratuitous passenger or unauthorized occupant, the Insurance Company need not pay the compensation. Even the wife of the deceased/P.W.1 has not stated that at the time of accident, her husband had travelled in the Van as a load man. Therefore, the Tribunal rightly observed that at the time of accident, the deceased had travelled in the said Van as an unauthorized person/gratuitous passenger and therefore, the Insurance Company is not liable to pay and fixed the liability on the owner of the offending Van. Therefore, there is no necessity to interfere with the order of the Tribunal regarding liability.

12. The learned counsel further submitted that the quantum fixed by the Tribunal is exorbitant and it does not reflect the just compensation. At the time of accident, the age of the deceased was 45 years and therefore, only

25% has to be adopted towards future prospects, whereas the Tribunal has adopted 30% which is against the proposition of law. Even the compensation awarded under the heads of ‘loss of earnings’, ‘loss of consortium’ and ‘loss of love and affection’, do not reflect the ‘just and reasonable figure’. Therefore, the quantum awarded by the Tribunal has to be reduced.

13. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the materials available on records.

14. The accident is admitted. The manner of the accident is also admitted. At the time of accident, the deceased had travelled in the offending Van and due to the accident, the deceased sustained injuries and succumbed to the injuries at the spot which is also not in dispute.

15. The claimants are the legal representatives/dependents of the deceased. According to the claimants, the deceased was working as a Painter and agricultural worker and in that way, one Rajendran, took the deceased in the Van for purchasing Tiles and Paints and after purchasing the same, they were returning in the said Van with goods during which, the Van met with an

accident and that the accident had occurred only due to the rash and negligent driving of the driver of the Van.

16. The only contention of the learned counsel for the 2nd respondent/Insurance Company is that, the deceased had travelled in the offending Van as an unauthorized/gratuitous passenger and therefore, the insurance does not cover the deceased. Even assuming that the deceased had travelled in the Van as a load man or owner of the goods, he should have travelled only in the cabin of the vehicle but not in the body of the vehicle along with goods. Therefore, there is a violation of policy condition.

17. The accident, manner of the accident and travelling of the deceased in the offending vehicle at the time of accident are not disputed. The Insurance Company has not filed any appeal or cross objection. The claimants have filed the appeal regarding liability.

18. Now the point for consideration is that, at the time of accident whether the deceased had travelled in the offending Van as an unauthorized/gratuitous passenger or travelled as a load man or authorized

agent of the goods.

19. According to the 2nd respondent/Insurance Company, when the owner of the goods namely Rajendran himself had travelled in the vehicle with the goods, there is no necessity for the deceased to travel along with the goods. Therefore, the deceased had travelled in the offending vehicle only as an unauthorized occupant/gratuitous passenger and therefore, the insurance policy does not cover the deceased. But a careful reading of the complaint of the informant, admittedly who is the owner of the goods shows that the informant Rajendran in order to purchase Tiles and Paints and also to load and unload the same in the offending vehicle, the deceased had travelled in the offending vehicle at the time of accident. Even in the FIR itself it is stated that the Rajendran along with the deceased went for purchasing Tiles and Paints and at that time of travelling, the accident had happened and that the deceased was also in the offending vehicle along with goods. The said fact has not been denied either by the owner of the vehicle or by the Insurance Company.

20. Admittedly, the offending vehicle was already insured with the 2nd respondent/Insurance Company and the premium was also received for the driver, cleaner and owner of the goods or agent of the goods.

Therefore, the Insurance company is liable to pay the compensation and it cannot escape that there is no insurance coverage. However, as stated above, since the owner and driver of the vehicle violated the policy condition and allowed the deceased to travel in the body of the vehicle along with the goods, it is a violation of policy.

21. As far as liability is concerned, while considering the above facts and circumstances, this Court finds that the 2nd respondent/Insurance Company is liable to pay the compensation to the claimants. However, since there is a violation of policy condition, the 2nd respondent/Insurance Company can recover the amount from the owner of the vehicle at a later point of time.

22. As far as quantum is concerned, at the time of accident, the age of the deceased was 45 years. Though multiplier is rightly adopted, instead of 25%, the Tribunal has added 30% towards future prospects which is erroneous. Therefore, this Court reduces the future prospects from 30% to 25%. Accordingly, a sum of Rs.12,48,000/- (Rs.8,000/-+25%x12x13x1/5) is granted towards loss of future income.

23. Insofar as the compensation awarded under the head of "loss of estate" is concerned, the Tribunal has granted a sum of Rs.1,00,000/-. In several cases, the Hon'ble Supreme Court has granted up to Rs.1,00,000/- towards "loss of estate". Therefore, we cannot treat the same as enormous and it is not proportionate.

24. Insofar as the loss of consortium is concerned, the Tribunal has granted Rs.1,00,000/-. This Court reduces the same to Rs.40,000/-. As far as "love and affection to children" is concerned, this Court reduces the same from Rs.1,00,000/- each to Rs.50,000/- each to the claimants 2 to 6 who are the children of the deceased. Accordingly, a sum of Rs.2,50,000/- (Rs.50,000/- x 5) is granted.

25. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Loss of future income	Rs.12,97,920/-	Rs.12,48,000/-	**Reduced**
2.	Loss of Estate	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
3.	Loss of consortium	Rs.1,00,000/-	Rs.40,000/-	**Reduced**
4	Love and Affection to Children	Rs.5,00,000/-	Rs.2,50,000/-	**Reduced**
5	Love and Affections to mother	Rs.50,000/-	Rs.50,000/-	Confirmed
6	Funeral Expenses	Rs.25,000/-	Rs.25,000/-	
	Total	Rs.20,72,920/-	Rs.17,13,000/-	**Reduced**

26. The award of the Tribunal is modified by reducing the compensation amount from Rs.20,72,920/- to Rs.17,13,000/-.

27. The 2nd respondent/Insurance Company is directed to deposit the modified award amount of Rs.17,13,000/- to the credit of MCOP No.446 of 2012, on the file of the Motor Accident Claims Tribunal, Ariyalur, with interest at 7.5% per annum from the date of claim petition i.e. 05.12.2012, till the date of realization (excluding the period of dismissal for default if any)

with costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment at the first instance. The 2nd respondent/Insurance Company is at liberty to recover the compensation amount from the insured/1st respondent in accordance with law.

28. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

29. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount if any deposited by them.

30. Except the minor claimants if any, the Tribunal is directed to permit the major claimants to withdraw the compensation amount without any formal application since the accident is of the year 2011 and the

claimants are struggling for more than 12 years. The compensation with respect to the minor/s shall be deposited with any one of the Nationalised Banks with liberty to withdraw the quarterly interest accrued on the said deposits, until the minor/s attains majority.

31. With the above modification, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs in the present appeal.

21.09.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal, Ariyalur.

2.The Section Officer,
VR Section,
High Court,
Madras.

P.VELMURUGAN. J.

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C.M.A. No.1948 of 2019

21.09.2023