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C.M.A.No.2720 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

**CORAM :
THE HON'BLE MR. JUSTICE P.VELMURUGAN**

**C.M.A.No.2720 of 2018
and
C.M.P.No.20572 of 2018**

The Branch Manager
The New India Assurance Co. Ltd.,
No.106, Periya Theru (First Floor)
Tiruvannamalai Town - 606 601.

... Appellant

Vs.

1. Shanmugasundaram
S/o.Parthiban
2. Umamageshwari
D/o.Parthiban
3. Kalaivani,
D/o.Parthiban
4. Rajivgandhi
S/o.Krishnan
[4th respondent was set *ex-parte* before the lower Court]
5. Krishnan
S/o. Kozhanthai

... Respondents



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Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.08.2016 made in MCOP No.717 of 2013 on the file of the Special Court (Motor Accident Claims Tribunal) at Tiruvannamalai and be pleased to dismiss the said claim petition against the appellant.

For Appellant : Mr.C.Ramesh Babu
For Respondents : Mr.C.Munusamy
For R1 to R3
R4 - *Ex parte* before the Tribunal
R5 - No appearance

J U D G M E N T

Challenging the quantum of compensation awarded by the Special Court (Motor Accident Claims Tribunal) at Tiruvannamalai, in MCOP.No.717 of 2013 dated 10.08.2016, the present appeal has been filed by the Insurance Company.

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



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3. It is the case of the claimants that on 06.02.2009, the deceased Parthiban hired a lorry bearing Registration No.TN-I-1116, belonging to the second respondent and insured with the third respondent/ The New India Assurance Co. Ltd., for transporting the coconuts from Melsengathil to Tirupattur coconut godown and while returning from Tirupattur coconut godown to Melsengathil, near Nagarajapatti Koot Road on Tirupattur-Tiruvannamalai Highways, the first respondent, who drove the lorry in a rash and negligent manner, dashed against the Tamarind tree, on the left side of the road. Due to the said impact, the deceased who was seated in the cabin sustained multiple injuries on the head and face and died on the spot. Resulting which, a case was registered against the first respondent. Hence, the claimants made a claim for a sum of Rs.95,00,000/- as compensation.

4. The first respondent, who is the driver of the lorry bearing Registration No.TN-I-1116 remained *ex-parte* before the Tribunal.

5. Resisting the claim made by the claimants, the respondents 2



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and 3 filed a counter statements, *inter alia*, contending that the accident had not occurred in the manner as projected by the claimants. They have also denied the age, occupation and income of the deceased.

6. To prove the claim, before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 was marked.

7. On an appreciation of the materials and the entire evidence on record, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN-I-1116, and hence, its insurer, the appellant is liable to pay the compensation. Further, the Tribunal awarded a sum of Rs.10,31,344/- as compensation and directed Insurance Company to pay compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:



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S.No.	Compensation awarded under the heads	Amount in Rs.
1.	Loss of Income	9,46,344
2.	Pain and suffering (Rs.20,000/- per each of the claimants)	60,000
3.	Funeral Expenses	25,000
	Total	10,31,344

8. Challenging the same, the New India Assurance Company Limited has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that as per the policy conditions, except the driver, cleaner, owner of the goods or the agent of the goods or load men, no other person can permit to travel in the goods vehicle. In the present case, the deceased travelled as an unauthorised passenger at the time of accident and therefore, there is no coverage with reference to the unauthorised passengers, who were travelling in the insured vehicle Therefore, the appellant is not liable to pay compensation.

10. The learned counsel for the respondents/claimants



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submitted that the claimants are the dependents of the deceased. The deceased was a coconut merchant, on 06.02.2009, he hired the offending lorry for transporting coconuts from Melsengathil to Tirupattur coconut godown, and after unloading the coconuts, he used to come back in the said lorry, at that time, due to rash and negligent driving of the first respondent therein, the accident had occurred and the deceased succumbed to injuries. Therefore, the case was registered against the driver/first respondent therein. He further submitted that there is a coverage for the owner of the goods, the appellant/Insurance is liable to indemnify the owner of the Lorry to pay the compensation amount.

11. Heard the learned counsel for the appellant and the learned counsel for respondents 1 to 3 and perused the materials available on record. There is no representation for the fifth respondent.

12. The accident was admitted. The offending vehicle insured with the appellant was also admitted. Now, the only question that arises for



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consideration in this appeal is as to whether the liability fixed on the Insurance Company is sustainable.

13. On a perusal of the records it is seen that P.W.2, who is an independent eye witness had stated that the first respondent, who drove the lorry in a rash and negligent manner, dashed against the Tamarind tree, which is on the left side of the road, due to which, the accident had occurred. Further, R.W.1, who is the owner of the said lorry admitted that the first respondent therein is solely responsible for the accident. Further, R.W.1/owner of the lorry also admitted that the deceased travelled as owner of the goods at the relevant point of time and there is no contra evidence to show that the deceased was travelled as an unauthorised passenger. Therefore, the Tribunal finds that the appellant/Insurance Company as an insurer of the offending lorry, is liable to pay compensation, since there is no violation of policy conditions.

14. This Court as a final Court of fact finding while re-appreciating the entire materials independently and finds that the deceased



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was travelled as owner of the goods on the date of accident. Though the offending lorry was insured with the appellant/Insurance Company and there is no violation of policy conditions, the appellant/Insurance Company is liable to indemnify the owner of the Lorry bearing Registration No.TN-I-1116, by paying the compensation amount to the claimants.

15. The quantum of compensation is concerned, the amounts awarded by the Tribunal are "just, fair and reasonable" and hence, they are confirmed.

16. Considering the above facts and circumstances, this Court does not find any perversity or infirmity in the Award passed by the Tribunal and there is no merit in this appeal and the same is liable to be dismissed. Accordingly, this civil miscellaneous appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

17. Accordingly, the appellant/Insurance Company is directed



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to deposit the entire award amount along with 7.5% interest and costs awarded by the Tribunal, from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants as held in 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). The claimants are permitted to withdraw the award amount in the ratio mentioned by the Tribunal, less the amount already withdrawn, if any, together with interest and costs, without filing any formal application.

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

1.The Special Court,
Motor Accident Claims Tribunal
Tiruvannamalai.

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



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P.VELMURUGAN, J.

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