



C.M.A.(MD).No.322 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.322 of 2009

and

M.P(MD) No.1 of 2009

The Oriental Insurance Company Ltd.,
Represented by
Branch Manager,
Nagercoil.

..... Appellant/ 2nd Respondent

-VS-

1. Valliammal
2. P.Karuppiah
3. Paul Nayagom Pillai
4. Navakumaran

.... 1st Respondent/ Petitioner
.... 2nd Respondent/ 1st Respondent
.... 3rd Respondent/ 2nd Respondent
.... 4th Respondent/ 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree passed in M.C.O.P.No. 266 of 2001, dated 16.10.2003 on the file of the Motor Accidents Claims Tribunal, (District Judge), Nagercoil.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : No appearance



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J U D G M E N T

The present appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/ (District Judge), Nagercoil, in M.C.O.P.No.266 of 2001, on the ground of liability.

2. According to the claimants, the deceased was travelling in the cabin of the Mini Lorry in the capacity of the load man on 05.02.2001, at about 05.30 a.m, when the lorry going in front of the mini lorry applied the sudden brake, the mini lorry dashed against the rear portion of the lorry and the said accident, the deceased had sustained head injury and he had passed away at Medical College Hospital, Tirunelveli. Hence, the claimants have prayed for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

3. The Insurance Company had filed a counter contending that they have issued the Insurance Policy only in the name of the fourth respondent who was the previous owner and the transfer ownership, was not properly



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informed to them and hence they are not responsible to pay compensation.

He further contended that the driver of the mini lorry was implicated in a criminal case arising out of the accident and the same was charge sheeted and he had also paid fine. They have further contended that another two persons also travelled in the insured vehicle viz., mini lorry along with the deceased person at the time of the accident. It is clearly in excess of the seating capacity and due to over load, this accident had happened and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence arrived at a conclusion that the accident has happened only due to the rash and negligent driving of the lorry by the first respondent, in which, the deceased was travelling. The Tribunal further found that the deceased was a load man and he was contributing a sum of Rs.100/- per day to the family. Ultimately, the Tribunal fixed annual income of the deceased Rs.18,000/- per year and awarded compensation of Rs.3,24,000/- (Rupees Three Lakhs and Twenty Four Thousand only) towards loss of income $\frac{1}{3}$ rd amount was deducted towards personal expenses and a sum of Rs.2,16,000/- (Rupees Two Lakhs Sixteen Thousand only) was finally arrived at Rs.2,16,000/- (Rupees



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Two Lakhs Sixteen Thousand only). For the reason best known the Tribunal ultimately fixed a compensation at Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only). This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, four persons have travelled in the cabin including the driver which is clearly in excess of the seating capacity. Therefore, it is clearly the violation of the policy condition and the Insurance Company is not liable to pay any compensation.

6. The respondents could not be served due to change in address.

7. I have considered the submissions made on the side of the learned counsel appearing for the appellant.

8. It is an admitted fact that the four persons have travelled in the cabin of the mini lorry. It is clearly in excess of the seating capacity. However, only one claim petition has been filed. The Insurance Company is not liable to pay the compensation only in cases where the claim petitions are filed by more



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number of persons than this seating capacity. But in the present case, only one claim petition has been filed. Therefore, I am in agreement with the learned counsel appearing for the appellant with regard to the issue of liability.

9. The Tribunal, after arriving at a finding that the claimant is entitled to a sum of Rs.2,16,000/- (Rupees Two Lakhs and Sixteen Thousand only) without assigning any reason has categorically reduced the compensation to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). It is also been seen from the award that no amount has been awarded towards loss of love and affection, Transport expenses or funeral expenses. Therefore, this Court is inclined to grant a compensation of Rs.2,16,000/- (Rupees Two Lakhs Sixteen Thousand only).

10. In view of the above said deliberations, the appellant/Insurance Company is directed to pay a sum of Rs.2,16,000/- (Rupees Two Lakhs Sixteen Thousand only) as compensation to the claimants. It will carry interest at the rate of 7.5% per annum from the date of claim petition.



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11. With the above said observation, the award of the Tribunal stands modified and the appeal is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
(District Judge), Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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