



C.M.A.(MD)No.776 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.11.2022

Delivered On : 19.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.776 of 2009

M/s.Royal Sundaram Alliance

Insurance Company Ltd.,

46, Whites Road, Chennai -600 014.

.. Appellant /2nd Respondent

Vs.

1.Ponnammal

2.Lalitha

3.Vairavaperumal

4.Subramani

5.Murugan

... Respondents 1 to 5 / Petitioners

6.Mahamuni

... 6th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 11.12.2008, made in M.C.O.P.No.175 of 2007, on the file of the Motor Accident Claims Tribunal – Subordinate Judge, Kulithalai.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents

: Mr.V.Kannan for R1 to R5

: No appearance for R6



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 11.12.2008, made in M.C.O.P.No.175 of 2007, on the file of the Motor Accident Claims Tribunal – Subordinate Judge, Kulithalai. The appellant herein is the second respondent, the respondents 1 to 5 herein are the claimants and the sixth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.175 of 2007, is as follows:

On 13.05.2005, the deceased-Rajalingam was working as a loadman in a mini door lorry bearing Registration No.TN-47-L-8246, when the vehicle was nearing Kularangampatti south deviation, the tyre burst and the vehicle capsized. The deceased sustained injuries, he was taken to Government Hospital, Manapparai, then, he was admitted in Trichy K.M.C. Hospital, he died scummed to the injuries. The deceased was working as a load man and was earning Rs.3,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.7,00,000/- as compensation.



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3. Brief substance of the counter filed by the first respondent in M.C.O.P.

No.175 of 2007, is as follows:

The age, profession and income of the deceased are denied. The vehicle was insured with the second respondent. There is no relationship of employer and employee between the deceased and the first respondent. The manner of accident is denied. The petitioners have to prove the manner of accident and the treatment given to the deceased.

4. Brief substance of the counter filed by the second respondent in M.C.O.P.No.175 of 2007, is as follows:

The manner of accident as narrated in the petition is denied. The deceased was not working as a load man. The income of the deceased was denied. The deceased was travelling only as a gratuitous passenger. The second respondent is not liable to pay compensation.

5. 1 witness was examined and 2 documents were marked, on the side of the claimants. 3 witnesses were examined and 2 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.2,49,000/- with interest at the rate of 6% p.a., to be paid by the second respondent on behalf of the first respondent.



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6. Against the order, the second respondent / appellant has filed this appeal

on the following grounds:-

The Tribunal ought to have confirmed that the deceased was a gratuitous passenger, who travelled in a goods vehicle and the Insurance Company is not liable under Section 147 of M.V.Act. When the policy of insurance does not cover such a class of person, a direction for payment at the first instance and to recover the same from the owner of the vehicle, is not maintainable, under Section 149 of M.V. Act. There is no appeal by the claimants or by the owner of the vehicle and the decision that the deceased was an unauthorised passenger is final. The insurance company is not liable to pay compensation for the unauthorised passenger.

7. On the side of the respondents 1 to 5/claimants, it is stated that the deceased travelled only as a load man, the right side tyre was burst and the vehicle capsized. The Tribunal awarded only a meagre sum, that is, Rs.2,49,000/- as compensation and prayed the award to be confirmed.

8. The only one point raised by the appellant is that the deceased travelled as an unauthorised passenger and that there was no coverage for the authorised passenger. The claim of the respondent is that the deceased travelled as a load man. A perusal of the insurance policy reveals that the policy is not an act only policy and



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that Rs.50/- was paid as premium for the driver, cleaner and coolies. Rs.100/- was paid as premium under the head for personal accident benefit, under Section IV, Rs. 50/- was paid under the head legal liability, for driver, cleaner and coolies, Rs.75/- was paid under the head of NFPP other than the employees. Since the premium was collected under the head of coolies and under the head of other than the employees, the insurance company cannot take a stand that the deceased was an unauthorised passenger.

9. It is seen that the Tribunal has fixed the rate of interest at 6% p.a., which is very low and the interest is hereby enhanced to 7.5% p.a.

10. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal and this Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. Rs.2,49,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 to 5 herein / claimants are permitted to withdraw their share amount along with proportionate interest and costs as apportioned by the Tribunal, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

19.01.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Kulithalai.

- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.776 of 2009

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