BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.135 of 2023

1.T.Thangapandy
2.Minor T.Kamala
3.Minor T.Jansirani ...Appellant/Petitioner

[minors rep. through their father/guardian/next friend 1st petitioner]

Vs.

1.M.Murugan
2.The Divisional Manager,
M/s.Shri Ram General Insurance Company Ltd.,
Hak Road, Ground Floor,
Chinna Chockikulam,
Madurai-625 002. ...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to modify the order dated 31.03.2015 made in M.C.O.P.No.30 of 2013 on the file of the IV Additional District Court (MACT), Madurai by fixing the liability to the second respondent instead of fixing the liability to the first respondent in M.C.O.P.No.30 of 2013.

For Appellant	: Mr.A.Haja Mohideen
For R2	: Mr.A.Balaji

JUDGMENT

This appeal has been filed challenging the order of the Motor Accident Claims Tribunal/IV Additional District Court in M.C.O.P.No.30 of 2013, dated 31.03.2015 directing the first respondent to pay the entire compensation amount.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)The deceased, namely Nagalakshmi and other workers were travelling in the vehicle bearing Registration No.TN-59-AA-7922, belonging to the first respondent. At that time, the first respondent, driver cum owner, drove the vehicle in a rash and negligent manner and as a result, the vehicle capsized. The persons travelled in the vehicle also got injured and one of the passengers died.

(ii)the first claimant is the husband of the deceased. The second and third claimants are the minor children of the deceased. The deceased was 35 years old. She was working in the coconut shop and earning a sum of Rs.6,500/- with batta of Rs.30 per month. Hence, the petitioners filed the claim petition seeking compensation of Rs.5,00,000/-.

(ii) The Insurance Company took a stand before the Tribunal that the passengers travelling in the vehicle were gratuitous passengers. Therefore, the Insurance Company is not liable to pay compensation.

(iii)The Tribunal on appreciation of evidence, holding that neither the deceased nor the injured are the owner of the goods and they travelled only as gratuitous passengers, exonerated the Insurance Company and directed the owner of the vehicle to pay the compensation.

4.Challenging the said finding, the present appeal is filed.

5.The only grievance of the appellants before this Court is that with regard to the same accident, as much as 7 claim petitions have been filed in M.C.O.P.Nos.2350, 2351, 2353, 2355, 2357 and 2358 of 2013 by the injured claimants as well as the legal heirs of the dependants. In all the above cases, the Tribunal had directed the Insurance Company to pay the compensation first and recover the same from the owner of the vehicle. The above orders had also been complied by the Insurance Company. However, only in the present case, the Tribunal had directed the first respondent /owner of the vehicle to pay the compensation amount.

6.The learned counsel for the appellants contended that since the Insurance Company satisfied the award in all other cases arising out of the same accident, same direction has to be made in the present case also.

7.The learned counsel for the Insurance Company fairly submitted that as far as the seven claim petitions are concerned, the Insurance Company satisfied the award passed by the Tribunal and also complied with the direction of the the Tribunal and no appeal has been filed as against the said claim petitions.

8.In view of the aforesaid submissions, this Court is of the view that when in the petitions arising out of the same accident the Insurance Company had also satisfied with the award, similar yardstick has to be applied in this case also. No doubt that as far as gratuitous passengers, the Insurance Company cannot be directed to pay the compensation amount. But the fact remains that the Insurance

Company has not challenged the award made in other cases and in fact they satisfied the award and also deposited the entire amount in all other cases referred above.

9.In such view of the matter, in the interest of the claimants, the Insurance Company is directed to pay the compensation as awarded by the Tribunal with interest and costs from the date of petition till the date of realization at the first instance to the credit of M.C.O.P.No.30 of 2013, on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Madurai within a period of four weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited, thereafter, the Insurance Company is entitled to recover the same from the first respondent. On such deposit, the major claimant is permitted to withdraw the said amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. The share of the minor claimants shall be deposited in any one of the Nationalized Bank, till the minor claimants attain majority. The guardian of the minor claimants is entitled to withdraw the interest once in three months directly from the bank.

10.In the result, this Civil Miscellaneous Appeal is allowed. No costs.

28.06.2023

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

1.The Motor Accident Claims Tribunal/
IV Additional District Court, Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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