



C.M.A. (MD) No. 698 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2023

Pronounced on : 05.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.698 of 2020

The Branch Manager,
Royal Sundaram General Insurance Co. Ltd.,
Trichy.

... Appellant/
2nd Respondent

*(cause title accepted vide Court order dated 04.12.2020
made in CMP(MD)No.6210 of 2020 in CMA(MD)No.
SR40819 of 2020)*

Vs.

1. Vairae

2. Sakthivel

3. Rajkumar

4. Selvakumar

5. Minor.Thirisha

*(Minor represented by his mother and guardian the
1st respondent Vairae herein)*

... Respondent Nos.1
to 5/Claimants

6. M.Sundaram

... 6th Respondent/
1st Respondent



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 19.02.2020 made in M.C.O.P.No.430 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal, Additional District Judge and Special Judge, Pudukkottai and allow this appeal.

For Appellant : Mr.M.E.Ilango

For R1 to R5 : Mr.A.Mithun Chakkaravarthi

For R6 : M/s.A.Banumathy

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.430 of 2014 dated 19.02.2020 on the file of the Motor Accident Claims Tribunal/Additional District and Special Court, Pudukkottai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.10,21,200/- (Rupees Ten Lakhs Twenty One Thousand and Two Hundred only) with interest at 7.5% per annum to the respondents 1 to 5/claimants for the death of Kambathadiyan, consequent to an accident occurred on 24.05.2014, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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3. It is pertinent to note that the appellant/insurer has not challenged the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the driver of the lorry, which belonged to the sixth respondent/first respondent.

4. The main defence taken by the appellant/insurer is that the vehicle involved in the accident is a goods vehicle, that 6 persons had travelled in the said vehicle as unauthorized passengers, which includes the deceased Kambathadiyan, that the seating capacity of the vehicle is 2 in all including the driver, that the appellant/insurer has issued only ACT policy in favour of the sixth respondent/first respondent and that since the sixth respondent/first respondent had willfully violated the terms and conditions of the policy, Motor Vehicles Act and Rules, the appellant/insurer is not liable for the claim.

5. The appellant/insurer, in an attempt to prove their defence, has summoned and examined the staff attached to the Regional Transport Office, Pudukkottai as R.W.1 and their Assistant Manager as R.W.2. R.W.1 in chief examination would say that 407 lorry bearing Registration



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No. TN-55-F-5569 was registered in their office and it is a goods vehicle and that 3 persons can travel, which includes the driver, cleaner and the owner of the goods. During cross-examination made on behalf of the sixth respondent/first respondent, R.W.1 would say that when permission was granted to take goods, their office used to issue guidelines to the owner and at that time, they would specify as to the number of load man, who can be taken in the vehicle and that 3 persons can travel in the cabin portion and 4 persons in the backside. R.W.2 in his chief examination affidavit would say that 8 persons including the deceased Kambathadiyan had travelled as unauthorized passengers in the goods vehicle and that there was no coverage for the above said persons. In cross-examination, R.W.2 would say that he was not aware as to whether 7 persons were permitted by the Regional Transport Office to travel in the goods vehicle involved in the accident. During cross-examination made on behalf of the respondents 1 to 5/claimants, he would say that the owner of the goods can very well travel while transporting the goods.

6. Admittedly, the policy issued by the appellant/insurer to the sixth respondent/first respondent is ACT policy.



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7. It is pertinent to mention that the sixth respondent/first respondent, in his counter statement, has stated that the deceased Kambathadiyan was travelling in sixth respondent/first respondent's vehicle as an agent of owner of the goods and that the vehicle was laden with stone slabs at the time of accident. As rightly observed by the Tribunal, the appellant/insurer has not specifically disputed the factum that the deceased Kambathadiyan was travelling along with stone slabs at the time of accident. The Tribunal, considering the evidence available on record, has rightly come to a decision that the deceased Kambathadiyan has travelled as an agent of owner of the goods at the time of accident.

8. As rightly pointed out by the learned counsel appearing for the respondents 1 to 5/claimants as well as by the learned counsel appearing for the sixth respondent/first respondent, the appellant/insurer has collected Rs.50/- towards legal liability for Coolies (IMT 39). Considering the above, the deceased Kambathadiyan, by no stretch of imagination, can be considered as an unauthorized passenger in the goods vehicle, but on the other hand, he has travelled as an agent of owner of the goods. Hence, the finding of the Tribunal mulcting liability on the appellant/insurer and the sixth respondent/first respondent cannot be found fault with.



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9. Now turning to the quantum of compensation, though the respondents 1 to 5/claimants have alleged that the deceased Kambathadiyan was earning Rs.20,000/- per month by working as a stone slabs maistry, they have not produced any evidence to substantiate the same. The Tribunal, taking note of the postmortem certificate, has rightly fixed the age of the deceased Kambathadiyan as 55 years at the time of accident and taking note of the nature of job and the age of the deceased Kambathadiyan, has rightly fixed the monthly income of the deceased at Rs.8,000/-. Considering the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and others* reported in **2017 ACJ 2700**, addition of 10% of the income towards future prospects cannot be found fault with and on such addition, the monthly income would come to Rs.8,800/-.

10. As per the dictum laid down by the Hon'ble Supreme Court in *Sarla Varma and others Vs. Delhi Transport Corporation and another* reported in **AIR 2009 SC 3104**, the Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased Kambathadiyan and on such deduction, the monthly income would come



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to Rs.6,600/-. As per the decision of the *Sarla Varma's case*, the Tribunal has rightly applied multiplier 11 and the loss of dependency would be Rs.8,71,200/- (Rs.6,600/- x 12 x 11).

11. The Tribunal has granted Rs.1,20,000/- towards loss of consortium and loss of love and affection and Rs.30,000/- under the conventional heads, all totalling Rs.10,21,200/-.

12. Considering the above, the compensation arrived at by the Tribunal cannot said to be excessive. Except the above, the appellant/insurer has not canvassed any other reason or ground to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 19.02.2020 passed in M.C.O.P.No.430 of 2014 on the file of Motor Accident Claims Tribunal/Additional District and Special Court,



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Pudukkottai, is confirmed. The appellant/insurer is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the respondents 1 to 5/ claimants are permitted to withdraw their shares together with interest and costs. Parties are directed to bear their own costs.

05.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Additional District and Special Court,
Pudukkottai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.698 of 2020

Dated : 05.09.2023