



C.M.A(MD)No.1008 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1008 of 2017

The Secretary,
The Crescent Matriculation Higher Secondary School,
Rajagiri,
Papanasam Taluk,
Thanjavur District.

... Appellant/1st Respondent

Vs.

1.Santhi

2.Minor. Sivaraman

3.Pattammal

... Respondents/Petitioners 1-3

(2nd respondent being minor rep.by his mother and
natural guardian 1st petitioner)

4.National Insurance Company Limited,
Represented by its Branch Manager,
Manojiappa Street,
Thanjavur.

... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award, dated 18.01.2013 passed in M.C.O.P.No.414 of 2011 by the learned Motor Accidents Claims Tribunal / Principal District Judge, Thanjavur and allow the above civil miscellaneous appeal.



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For Appellant : Mr.B.Jameel Arasu
For R1 : Mr.M.Tamilmani
For R4 : Mr.N.S.Ramakrishna Doss

JUDGEMENT

The present appeal has been filed by the owner of the vehicle challenging an award of the Motor Accident Claims Tribunal, Thanjavur.

2. The learned counsel for the respondents 1 and 2 has filed a memo that the 3rd respondent who is the mother of the deceased had passed away. Since respondents 1 and 2 who are the legal heirs of the 3rd respondent are already on record, there is no necessity to file a legal heir petition. The memo is recorded.

3. According to the claimants, the deceased Muthu Ramakrishnan was travelling in a van belonging to the 1st respondent school on 11.08.2007. At about 4.30 a.m on the said date, the driver of the van had driven the vehicle in a rash and negligent manner and dashed on the right side of a bridge and the van got capsized and the deceased had passed away. The petitioners made a claim for a sum of Rs.10,00,000/-.



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4. The owner of the vehicle, namely the school had filed a counter contending that it was an Act of God and they are not liable to pay any compensation. The insurance company had filed a counter contending that there was violation of policy condition that the school van was intended only to carry the children and the teachers and the vehicle has been used as a tourist van and therefore, they are not liable to pay any compensation. The company had also disputed the quantum of compensation prayed for by the claimants.

5. The tribunal after considering the oral and documentary evidence arrived at a finding that the accident has happened only due to the rash and negligent driving of the van of the 1st respondent by its driver and he alone was responsible for the accident.

6. The tribunal after going through Exhibit R.2 permit came to a conclusion that the transport authorities have granted permit to the vehicle only to ply within Thanjavur District. However, the accident has taken place in Cuddalore and therefore, there is violation of permit conditions. Based upon the above said findings, the tribunal exonerated the insurance company and mulcted the liability on the owner of the vehicle. The said award is under challenge in the present appeal.



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7. According to the learned counsel appearing for the appellant/owner of the vehicle, some other injured persons had filed M.C.O.P.Nos.143,144,146 and 147 of 2008 before Additional District Court, Thanjavur by way of a common order and all the M.C.O.Ps were allowed and the owner of the vehicle and the insurance company were held jointly and severally liable. However, the present M.C.O.P.No.414 of 2011 was heard separately by the Principal District Judge, Thanjavur and he had arrived at a different finding that the insurance company is not liable to pay the compensation and the owner alone is liable to pay the compensation. Therefore, according to the learned counsel appearing for the appellant, there cannot be two different awards fixing liability upon two different persons arising out of the same accident.

8. The learned counsel for the appellant had further contended that though Exhibit R.2 permit has been granted in favour of the vehicle to ply within Thanjavur District, a compounding fee of Rs.500/- has been paid by the vehicle to take the said vehicle beyond Thanjavur District. Therefore, there is no violation of policy condition. Hence, the insurance company should be made liable to pay the compensation.



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9. Per contra, the learned counsel appearing for the insurance company had contended that as per the permit condition, the vehicle has to be operated only within the district of Thanjavur. That apart, the vehicle should be used only for the purpose of transporting the children and the teachers of the school. However, the said vehicle has been used as a tourist van to transport passengers from Thanjavur to Chennai for a marriage function. Therefore, when there is clear violation of policy condition, the question of imposing the liability upon the insurance company would not arise. He further contended that common order in M.C.O.P.Nos.143, 144, 146 and 147 of 2008 would not be binding in the present case. He further contended that some documents pertaining to the payment of compounding fee for violation of permit conditions have been filed in the previous batch of M.C.O.Ps. However, the said document has not been presented in the present case. Therefore, the finding arrived at the said judgment cannot be relied upon. Therefore, he prayed for sustaining the award passed by the tribunal.

10. I have carefully considered the submissions made on either side and perused the records.



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11. Admittedly, the vehicle involved in the accident is a school van belonging to the appellant. As per Exhibit R.2 permit conditions, the said school van has to be operated only within Thanjavur District. In the present case, the said school van has been used as a tourist vehicle and while the vehicle was travelling through Cuddalore, the accident has taken place. Therefore, there is clear violation of permit conditions whereby violated the policy conditions of the insurance company.

12. In cases of violation of policy conditions, this Court normally directs the insurance company to satisfy the award and recover the same from the owner of the vehicle. But this is an appeal filed by the owner of the vehicle to shift the liability on the insurance company. This Court is not inclined to shift the liability on the insurance company thereby directing them to satisfy the award and recover the same from the owner of the vehicle. Ultimately, the owner has to satisfy the award.

13. In view of the above said deliberations, this Court is of the considered opinion that the tribunal has properly appreciated Exhibit R.2 permit and has arrived at a finding that the insurance company is not liable to pay any compensation, but only the owner of the vehicle, which has not been challenged by the claimants. As far as the quantum of award



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is concerned, the tribunal has fixed the award at Rs.5,60,000/- for the death of 46 year old noon-meal organizer in a middle school.

Considering the age of the deceased as 46 years, the tribunal has correctly applied the multiplier of 13 and had arrived at a loss of income at Rs.5,000/- per month. Therefore, this Court does not find the award to be exorbitant or unreasonable.

14. In view of the above said findings, there are no merits in the appeal. The appeal stands dismissed. The appellant had already deposited a sum of Rs.3,79,290/-. The balance amount shall be deposited within a period of eight (8) weeks from the date of receipt of copy of this order.

03.04.2023

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

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1.The Motor Accidents Claims Tribunal /
Principal District Judge,
Thanjavur.

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



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R.VIJAYAKUMAR ,J.

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Order made in
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