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C.M.A. No.1088 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1088 of 2018
and
C.M.P. Nos.9133 to 9135 of 2018

P. Reddy,
M/s.Indofil Industries Ltd.,
LIPL – A-163916,
residing at No.1625,
Trichy Road,
Opposite of Stanes Conention Centre,
Coimbatore.

... Appellant

vs.

Kamala (Died)
1. Raja
2. Sankar
3. Murugan
4. The Divisional Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
No.5, R.J. Plazam Katpadi Main Road,
Near Palar Bridge,
Virudhampet,
Chennai.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the direction issued to recover the award amount from the appellant in the award dated 29.04.2017 passed in MCOP No.14 of 2016 on the file of Special Sub Judge, Motor Accident Claims Tribunal.



C.M.A. No.1088 of 2018

For Appellant

: Mr.S. Arun Kumar

WEB COPY For Respondents

: Ms. C. Harini
for M/s.M.B.Gopalan
R1 to R3 - Dispensed with
vide Court order,
dt 21.02.2018

JUDGMENT

This appeal has been filed by the owner of the vehicle, which was involved in the accident which resulted in the death of the accident victim.

2. Heard Mr.S. Arun Kumar, learned counsel for the Appellant and Ms.C. Harini, learned counsel for the fourth respondent.

3. The respondents 1 to 3 are the claimants and the 4th respondent is the Insurance Company which has insured the Bolero van, which was involved in the accident. The appellant is the owner of Bolero Van and he claims that erroneously the Tribunal has granted pay and recovery rights to the 4th respondent / Insurance Company, despite the settled law that insofar as a vehicle whose unladen weight is less than 7500 kgs, pay and recovery rights cannot be granted.



C.M.A. No.1088 of 2018

4. Admittedly, the vehicle involved is a Bolero Van, whose unladen weight is below 7500 kgs. It is settled law as laid down in the decision rendered by the Hon'ble Supreme Court in the case of ***Mukund Dewangan*** reported in (2016) 4 SCC 298 that in case of a Light Motor Vehicle (LMV) if the unladen weight is less than 7500 kgs, pay and recovery rights cannot be granted. In view of the settled law, this Court is of the considered view that the Tribunal by total non application of mind to the well settled law has erroneously granted pay and recovery rights to the 4th respondent / Insurance Company under the impugned award.

5. For the foregoing reasons, the impugned award, dated 29.04.2017 passed by the Special Sub Court, Motor Accidents Claims Tribunal, Thiruvannamalai in M.C.O.P. No.14 of 2016 against the appellant i.e., granting pay and recovery rights to the 4th respondent / Insurance Company is hereby set aside.

6. In the result, this Civil Miscellaneous Appeal stands allowed insofar as the appellant is concerned. No costs. Consequently, connected miscellaneous petitions are closed.



C.M.A. No.1088 of 2018

7. Since the 4th respondent / Insurance Company has already deposited the award amount, the respondents 1 to 3 / claimants are permitted to withdraw the amount, by filing appropriate application before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgement.

10.04.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Special Sub Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.



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C.M.A. No.1088 of 2018

ABDUL QUDDHOSE, J.

vsi2

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