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C.M.A.No.1899 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.1899 of 2021
and CMP.No.10256 of 2021

The Divisional Manager,
The United India Insurance Co.Ltd.,
M.M.Reddy Complex,
Old Bangalore Road,
Hosur - 635 109.

... Appellant

Vs.

1. Basamma
2. Kamma
3. Shivarudramma
4. R.Sudesh
5. C.Jayaraman

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in MCOP.No.374 of 2018 dated 19.03.2020 Motor Vehicle Accident Claims Tribunal Judge (Additional District Judge), Hosur.



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For Appellant : Mr.J.Chandran

For Respondents : No appearance

J U D G M E N T

This appeal has been filed by the Insurance Company/second respondent to set aside the decree and judgment passed in MCOP.No.374 of 2018 dated 19.03.2020 on the file of Motor Vehicle Accident Claims Tribunal (Additional District Judge), Hosur.

2. The parties herein are referred as per their litigative status before the claims Tribunal. The case of the claimants are that on 26.07.2010 at 11:30 hours the deceased Rasudappa son of Rudhrappa was travelling in the tempo bearing Regn.No.TN-28-L-6828 as a cleaner. When the said Tempo was proceeding near Sivanangiri Well, the driver of the Tempo drove the same in a rash and negligent manner in an uncontrollable speed, without minding the rules of the road. Due to over speed, the driver of the said vehicle could not control the vehicle and he lost control and the Tempo capsized on the right side of the road. Due to the impact, the said Rasudappa sustained injuries on



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his head and other vital organs. Immediately after the accident he was taken to the Government Hospital, Anchetty and then to Government Hospital, Denkanikotta for better treatment. But on the way to Denkanikottai Hospital, he died. The Anchetty Police have registered a case against the driver of the said Tempo in Crime No.84/2010 under Section 279, 337, 338 and 304(A) of IPC. For the death of the deceased his wife, daughters and son have come forward with the claim petition seeking compensation of Rs.20,00,000/- by invoking Section 166 of the Motor Vehicles Act.

3. The 5th respondent who is the owner of the Tempo Van has not contested the claim and remained exparte.

4. The appellant/Insurance Company has disputed the claim on the ground that the deceased in this case was an unauthorised passenger travelled in the Tempo and he is not a Cleaner as stated by the claimants. As per MVI report which was marked as Ex.R1 and evidence of RW2 shows that the offending vehicle was a goods vehicle in which 40 passengers travelled to attend the CPI party meeting and the deceased had travelled as an



unauthorised passenger and subsequently the vehicle met with an accident.

Hence the Insurance Company is not liable to indemnify the 5th respondent the owner of the vehicle.

5. Based on the evidence placed on record, the Tribunal has accepted the case of the claimants that the deceased was a cleaner and quantified compensation and awarded Rs.7,73,000/- to be paid by the Insurance Company. Aggrieved by the said award, the Insurance Company has come forward with the present appeal.

6. The learned counsel appearing for the Insurance Company submitted that admitted case of the claimants that the deceased travelled in the goods vehicle. Even though the claimants contend that the deceased was a cleaner but the evidence on record only shows that he was one of the member of the political party and he travelled to attend the political meeting and this has not been properly considered by the Tribunal and prays to absolve them from indemnifying the 5th respondent.



7. The respondents herein have been served but they have not come forward to contest the appeal.

8. To prove the occurrence, the claimants have examined PW2 one of the person travelled in the Tempo Van along with the deceased. In the cross examination he has admitted that all the persons travelled in the Tempo Van are from his village and they travelled to attend the political meeting. 38 persons travelled in the vehicle and 10 to 12 persons sustained injuries. Complaint was lodged by one of the party cadre namely Malliga Arjuna who was also an injured in the accident. Ex.P1-FIR also reads that around 40 persons are from the same village and the defacto complainant Malliga Arjuna have travelled in the Tempo from Anchetty to Urigam road and while they reached Sivanangiri Well, Tempo was capsized on the right side of the road and several persons were injured and one of the injured was from his village namely Rasudappa who was severely injured and on the way to hospital he died. PW1 in her evidence has stated that the deceased was travelling in the Tempo as a cleaner and she has also admitted that her relative namely Malliga Arjuna has lodged a criminal complaint. She has also stated



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that other persons who travelled in the Tempo along with her husband also sustained injuries. Apart from the evidence of PW1 & PW2, Insurance Company relied on evidence of RW3 who is the Police Official who has deposed based on the records stated that none of the witnesses have given statement that deceased Rasudappa was a cleaner and travelled in the vehicle as a cleaner. According to the witnesses, deceased Rasudappa had travelled in the vehicle to participate in the political meeting and these evidence elicited by the Insurance Company shows that the deceased has travelled in the goods vehicle and met with an accident. Further, the deceased travelled along with his villagers to participate in the political meeting. The claimants have not produced any iota of evidence to show the prima facie case that the deceased was a cleaner by profession. They have also not examined any witness to show that the deceased was working under the 5th respondent as a cleaner. The Tribunal without considering the evidence adduced more importantly the admitted evidence of the claimants that totally 40 persons travelled in the Tempo and deceased has travelled in the vehicle along with his villagers and participated in the political meeting. The finding given by the Tribunal that he was a cleaner under the 5th respondent is not sustainable and based on no



evidence the same is not sustainable. As far as the liability to pay the compensation for the persons who travelled in goods vehicle has been well settled in the judgement of the Hon'ble Supreme Court of India and also by this Court in the cases of

1. ***Baljit Kaur Vs State of Punjab and others*** reported in ***(2018) 11 SCC 614***
2. ***New India Assurance Co Limited Vs Asha Rani and others*** reported in ***(2201) 6 SCC 724***
3. ***Bharati AXA General Insurance Co.Ltd., Vs Aandi and Others*** reported in ***2020(1) TAC 894***

9. In the above judgments it is settled that Insurance Company is not liable to pay the compensation to the persons who have travelled in the goods vehicle as an unauthorised passenger, only the owner of the vehicle is liable to pay the compensation.

10. Accordingly, the appeal filed by the Insurance Company is allowed and the 5th respondent/owner of the vehicle is liable to pay the compensation quantified by the Tribunal to the claimants within a period of six weeks from



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the date of receipt of a copy of this order and the Insurance Company is permitted to withdraw the amount, if any, already deposited. No costs.

Consequently connected miscellaneous petition is also closed.

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Index : Yes / No
Internet : Yes/ No
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K. RAJASEKAR, J.

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To

1. The Motor Vehicle Accident Claims Tribunal
(Additional District Judge), Hosur.
2. The Section Officer,
VR Section,
High Court,
Madras.

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