



C.M.A.(MD) No.33 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.33 of 2021

and

C.M.P.(MD) Nos.373 of 2021 & 1155 of 2022

IFFCO TOKIO General Insurance Company Ltd.,
Tripur Arcade, 3rd Floor,
No.75, Thiruvananthapuram Road,
Palayamkottai,
Thirunelveli - 627 002.

... Appellant

Vs.

1.S.Perumal (died)
S/o.Sivan

2.Murugan
S/o.Sivan

3.Kuruvammal
W/o.Late.S.Perumal

4.Magendran
S/o.Late.S.Perumal

5.Sridevi,
D/o.Late.S.Perumal

6.Lakshmi
W/o.Sivan

... Respondents



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[Third to sixth respondents were brought on record as LR's of the deceased first respondent *vide* court order dated 10.07.2024 made in C.M.P.(MD) Nos.7822, 7823 and 7825 of 2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 29.07.2019 passed in M.C.O.P.No.78 of 2015 on the file of the Motor Accident Claims Tribunal [I Additional District Court], Thoothukudi.

For Appellant : Mr.V.Sakthivel

For R2 : Mr.M.Maran

For R3 to R6 : Mr.S.Senthil Sankaranatha Kumar

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Tribunal's finding on liability.

2. The first respondent had filed a claim petition, stating that on 16.07.2014, at about 11:00 a.m., while he was travelling as a cleaner in TATA ACE bearing registration No.TN-69-AC-0392, the driver of the vehicle drove the same in a rash and negligent manner and applied sudden break, due to which the said vehicle capsized, as a result of which the first respondent sustained grievous injuries.



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3. The owner-cum-driver of the TATA ACE, the second respondent herein, had filed a counter before the Tribunal, denying the relationship between him and the first respondent and the averments in the claim petition, and stating that in any case, the compensation claimed was excessive.

4. The appellant had filed a counter before the Tribunal, stating that the owner of the vehicle had violated the terms of the contract of insurance by transporting 10 persons, who are all gratuitous passengers, and therefore, they are not liable to pay any compensation.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and marked Exs.P1 to P11, and the appellant examined R.W.1 and R.W.2 and marked Exs.R1 to R3.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the insured vehicle and directed the appellant, the Insurance Company, to pay a compensation of Rs.2,21,000/- to the first respondent.



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7. During the pendency of this appeal, the first respondent/claimant died and his legal heirs were impleaded as the third to sixth respondents in this appeal *vide* order of this Court dated 10.07.2024 passed in C.M.P. (MD) Nos.7822, 7823, and 7825 of 2024.

8. The learned counsel for the appellant submitted that since the second respondent, the owner-cum-driver of the insured vehicle, had permitted the gratuitous passengers to travel in his goods vehicle, the appellant ought to have been exonerated from payment of compensation for the violation of the terms of the contract of insurance; and that the second respondent had also driven the insured goods vehicle without a valid badge, which is necessary for driving the goods vehicle, and therefore prayed for setting aside the award of the Tribunal.

9. The learned counsel for the third to sixth respondents, per contra, submitted that since the second respondent had violated the terms of the contract of insurance, the Tribunal had given liberty to the appellant to recover the compensation from the owner of the insured vehicle after paying it to the claimant, and therefore, the award of the Tribunal need not be interfered with, and prayed for dismissal of this appeal.



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10. The learned counsel for the second respondent, the owner-cum-driver of the insured vehicle, submitted that the evidence would show that there was no violation of policy conditions, and therefore, the award of the Tribunal giving liberty to the appellant to recover the compensation from the second respondent is liable to be set aside.

11. The only point for consideration in the instant appeal is whether the Tribunal's finding on liability.

12. The quantum of compensation is not under challenge. The only point raised by the appellant is that the second respondent had violated the policy conditions and the direction of the Tribunal to pay and recover the compensation cannot be sustained, as the second respondent had permitted nearly 10 passengers to travel in his goods vehicle. The contents of the FIR would also suggest that 10 persons travelled in the goods vehicle.

13. The Tribunal also found that the first respondent/claimant had not established that he was working as a cleaner in the said vehicle. The



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WEB COPY said finding cannot be faulted, as no evidence has been let in by the first respondent/claimant to prove his employment under the second respondent. The evidence of R.W.2 would show that at the time of the inspection, the relevant badge to drive the goods vehicle was not produced by the second respondent and that no badge has been issued permitting him to drive the goods vehicle. Therefore, the finding of the Tribunal that the second respondent had violated the terms of the policy cannot be faulted. The Tribunal had directed the appellant to pay and recover the compensation from the second respondent. In the facts and circumstances of the case, this Court finds that the direction to the appellant to pay the compensation to the first respondent/claimant at the first instance and thereafter recover it from the second respondent does not call for any interference and is therefore confirmed.

14. It is reported by the learned counsel for the appellant that the appellant has already deposited the entire compensation of Rs.2,21,000/- awarded by the Tribunal along with interest. The third to sixth respondents, who are the legal heirs of the deceased first respondent, are entitled to the compensation as per the following apportionment:



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- i. The third respondent, the wife of the deceased first respondent, is entitled to a sum of Rs.1,00,000/-;
- ii. The fourth and fifth respondents, the children of the deceased first respondent, are entitled to a sum of Rs.50,500/- each;
- iii. The sixth respondent, the mother of the deceased first respondent, is entitled to a sum of Rs.20,000/-.

15. They are permitted to withdraw their shares along with the proportionate interest and costs, less the amount already withdrawn by the deceased first respondent during his lifetime, if any, by filing suitable application before the Tribunal.

16. The second respondent shall deposit the compensation amount together with interest and costs awarded by the Tribunal within a period of 12 weeks from the date of receipt of a copy of this Judgment.

17. On such deposit, the appellant shall be permitted to withdraw the same, along with interest and costs, by filing suitable application before the Tribunal.



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18. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Thoothukudi, Thoothukudi District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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