BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/07/2024

**CORAM**

The Hon'ble Mr.Justice **G.ILANGOVAN**

**CMA(MD)No.732 of 2021**
**and**
**CMP(MD)No.6702 of 2021**

Chola MS General Insurance Company Ltd.,
2nd Floor, Dare House,
NSC Bose Road,
Chennai. : Appellant/2nd Respondent

Vs.

1.Pushpagandhi
2.Minor Gopikashree
3.Minor Yoga Deepikashree
4.Parvathi
5.Subramani : R1 to R5/Petitioners
6.Chandrasekaran : 6th Respondent/ 1st Respondent

**PRAYER:**-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed in MCOP No.2 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai, dated 13/10/2020.

For Appellant : Mrs.K.R.Shivasankari

For Respondents : No appearance

**JUDGMENT**

This appeal has been filed to set aside the award, dated 13/10/2020 passed in MCOP No.2 of 2015 by the Motor Accident Claims Tribunal/Sub Court, Kulithalai.

2.**The facts in brief**:-

On 19/02/2012 at about 07.30 am, the deceased and his wife was travelling in a goods vehicles bearing registration No.TN-34—D-6802 as owner of the goods. At that time, the driver of the first respondent drove the same in a rash and negligent manner. As a result of which, the deceased was thrown out of the vehicle, sustained fatal injuries, taken to the Government Hospital, Trichy. But without responding to the treatment, he died on 01/03/2012 in the hospital.

3.A case in Crime No.27 of 2012 was registered for the offences under sections 279, 337 and 304(A) IPC against the driver of the vehicle. The deceased aged about 35, Carpenter by profession and earning not less than Rs.750/- per day. Claiming compensation of Rs.15,00,000/-, the claim petition was filed.

4.That was resisted by the Appellant Insurance Company by filing counter stating that the first respondent vehicle did not have proper licence; There was no fitness certificate. Apart from that, it is also stated that the deceased was travelling as a gratuitous passenger in the goods vehicle on the back side. So, the claimants are not entitled for any compensation to be paid by the appellant on behalf of the insured.

5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 6 documents were marked. On the side of the Insurance Company, one witness was examined and one document was marked.

6.The Tribunal at the conclusion of the enquiry, regarding the first aspect of negligence recorded a finding that the accident itself was spoken for itself. The speed by which vehicle was driven in a rash and negligent manner shown the negligence. It was driven in such a speed without care and caution by which one of the persons thrown out of the vehicle and sustained injuries. The manner of the occurrence itself does indicate the rash and negligent driving on the part of the first respondent vehicle driver. So, that portion of the finding of the Tribunal does not require reconsideration.

7.More-over, no argument was advanced by the appellant with regard to the negligence.

8.With regard to the quantum and liability only, the appellant raised the argument stating that there is indication in this case that the deceased was travelling along with the goods in the goods vehicle by sitting back side. So, this itself is a clear violation of the Motor Vehicles Rules and Policy conditions. So, the Insurance Company cannot be fastened with liability to reimburse on behalf of the owner of the vehicle.

9.With regard to the compensation, the Tribunal recorded a finding that there was no income proof. So, considering the wage structure of the skilled employee, it fixed the income at Rs.7,500/- per month. He was aged about 35. Multiplier '16' was adopted. 40% of the future prospects was added to the monthly notional income. After 1/3rd deduction, the Loss of Dependency was fixed at Rs.15,12,000/-. To that, conventional amounts were added as detailed below:-

| | |
|---|---|
| Loss of Dependency | Rs.15,12,000/- |
| Loss of love and affection | Rs. 1,15,000/- |
| Loss of consortium | Rs. 50,000/- |
| Funeral expenses | Rs. 10,000/- |
| Transportation charges | Rs. 5,000/- |
| Total | **Rs.16,92,000/-** |

10.Regarding the compensation also, no argument was advanced on the side of the appellant.

11.Now, we will consider regarding the liability of the appellant, the Tribunal recorded a finding that the deceased was a third party. So, he is entitled to be reimbursed by the appellant on behalf of the insured.

12.We will take up that point first. The finding of the Tribunal is that the deceased is a third party. So, the dependents are entitled for compensation to be reimbursed by the appellant is also wrong conclusion. In respect of the goods vehicle, none is permitted to travel in the back side, even the owner of the goods.

13.We will see whether the deceased was travelling along with the goods as the owner and if there is any violation of the permit, Motor Vehicles Rules, policy condition, etc.

14.Before that, we will see whether the deceased was covered under the policy.

15.Third party liability premium was paid at Rs.9,400/-. A cleaner/coolie and driver is covered and premium amount was paid. Apart from that, PA coverage for owner-cum-driver was paid as Rs.100/-. Total premium collected was Rs.1,409/-.

16.Now we will see whether the deceased was travelling along with goods. If the deceased travelling along with the goods as owner, then the Insurance Company cannot disown its liability.

17.Now we will go the evidence on record on this aspect.

18.PW1 has stated that on 19/02/2012 for attending ear-boring ceremony of his relatives, they loaded sridhana articles in the goods vehicle and travelled in the vehicle as owner of the goods. It was suggested to PW1 that they travelled in the vehicle for attending the function. In the FIR also, the informant namely PW1 has stated that for attending the ear-boring ceremony, they travelled in the vehicle along with sridhana goods. Since it is the earlier statement available on record, it is accepted as true. So, it can be concluded that the deceased was travelling along with goods in the vehicle.

19.It is contended by the appellant that the problem lies in travelling on the back side of the vehicle. None is permitted to travel in the back side of the vehicle. Even the owner of the goods is permitted to travel in the cabin and not in the back side of the vehicle, which is not intended for carrying any person. There is clear violation on the part of the first respondent driver in taking the deceased on the back side.

20.In this regard, the judgment of the Coordinate Bench of this court reported in ***The Branch Manager, New India Assurance Company Ltd., Vs. P.Ayyanar and others [2022(2)TNMAC 9]*** is relevant for our consideration. The relevant portion of the judgment is extracted herein:-

> *"13.Rule 236 of the Tamil Nadu Motor Vehicles Rules 1989 speaks about the total number of persons to be carried in the cabin of a goods carriage. As per the said Rule, a maximum number of 6 persons including the driver can be carried in the cabin of a goods carriage. In the present case, admittedly the claimants have not travelled in the cabin and therefore, the question of invoking Rule 236 to contend that 5 persons apart from the driver can travel in the goods carriage is not legally sustainable.*
>
> *14.A perusal of Rule 238 of Tamil Nadu Motor Vehicles Rules indicates that no person can be carried in the goods vehicle upon the goods and in*

*such a manner that the person is in danger of falling from the vehicle. It further points out that in no case any person can be carried in a goods vehicle in such a manner that any part of his person when he is in a sitting position, he is at a height exceeding 300 cms from the surface upon which the vehicle rests. When a person travels upon the goods in a sitting position, it should not exceed 300 cms from the road. Therefore, the burden is upon the insurance company to establish that when the the claimants were sitting upon the goods, it was higher than 300 cms from the road. In the present case, the insurance company has not discharged the said burden.*

*15.Such an interpretation of Rule 238 is supported by reading of Rule 239 to 241. Rule 239 clearly indicates that the Regional Transport Authority or State Transport Authority can permit or allow a large number of persons to be carried in a goods carriage subject to certain conditions. As per Rule 240, nothing in Rule 236, 238 and 239 will deem to authorize the carriage of any person for hire or reward on any goods carriage. Rule 241 clearly points out that no person shall travel in a goods* *carriage except in accordance with Rule 240.*

*16.A combined reading of Rules 238 to 241 clearly indicates that there is no absolute prohibition for the travelling of a person upon the goods in a goods carriage provided in a sitting position, the height does not exceed 300 cms from the road. In fact, the authorities have got power to allow large number of persons to be carried in a goods carriage on certain conditions. However, no person can be carried for a hire or reward on a goods carriage. Therefore, it is clear that when a person travels in a goods carriage over and upon the goods as a load man/coolie and in a sitting position and it's height does not exceed 300 cms from the road, the same can never be construed to be a statutory violation. Hence, the contention of the learned counsel appearing for the appellant/insurance company that if a load man/coolie have travelled upon the goods, it would amount to statutory violation, is not legally sustainable."*

21.Here also, there is no clear indication to the effect that the deceased travelling in the vehicle on the top of the goods violating the statutory rules.

22.Regarding the compensation, as mentioned above, the notional income of the deceased was taken as correct one. To that, 40% of the future prospects was added. 1/3$^{rd}$ was deducted towards personal and living expenses. The loss of dependency was fixed at Rs.15,12,000/-. Consortium for the first respondent was fixed at Rs. 50,000/-, which was not proper. It is reduced to Rs. 40,000/-. Similarly, consortium for the children namely 2 and 3 is fixed at Rs.40,000/- each. So far as the claimants 4 and 5 are concerned, who are the parents, parental consortium is fixed at Rs.40,000/- each. But during the pendency of the appeal proceedings, it was informed the court that the 4$^{th}$ respondent namely the mother of the deceased passed away. So that portion of the consortium is liable to be deducted. Accordingly, recalculation is made:-

| Head | Award of the Tribunal | Award of this Court |
|---|---|---|
| Loss of Dependency | Rs.15,12,000/- | Rs.15,12,000/- |
| Loss of love and affection | Rs. 1,15,000/- | - |
| Loss of consortium | Rs. 50,000/- | Rs. 40,000/ |
| Funeral expenses | Rs. 10,000/- | Rs. 15,000/- |

| | | |
|---|---|---|
| Transportation charges | Rs. 5,000/- | - |
| Filial consortium | - | Rs. 1,20,000/- |
| Loss of estate | - | Rs. 15,000/- |
| Total | Rs.16,92,000/- | **Rs.17,02,000/-** |

23.In the result, this Civil Miscellaneous Appeal is **allowed in part.** The award of the Tribunal is modified as **Rs.17,02,000/-.** The appellant Insurance Company is directed to deposit the entire modified amount together with interest. On such deposit, the claimants are entitled to get their respective share as per the apportionment of the Tribunal. The claimants are directed to pay necessary court fee for the enhanced amount. No costs. Consequently, connected Miscellaneous Petition is closed.

29/07/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Sub Judge, Kulithalai, Karur District.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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**CMA(MD)No.732 of 2021**

29/07/2024