



C.M.A.(MD)No.569 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **02.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.569 of 2020
and C.M.P(MD)No.5892 of 2020

The Oriental Insurance Company Limited,
Thali Road, Udumalai Taluk,
Udumalai Nagar,
Kovai District

...Appellant/Respondent No.3

Vs.

1.K.Muthukumar
2.M.Rajeswari
3.R.Venkatachalam
4.T.Nagarajan

... Respondents 1 & 2/Petitioners 1 & 2

...3rd Respondent/1st Respondent

...4th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the award made in M.C.O.P.No.309 of 1999 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Palani dated 05.06.2017.

For Appellant	: Mr.C.Karthik
For R1 & R2	: Mr.S.Karthik
For R4	: No appearance
R3	: Dispensed with



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J U D G M E N T

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The instant appeal has been filed by the Insurance Company questioning the finding on liability fixed by the Tribunal.

2. The claimant had travelled in a milk van insured with the appellant, and since the driver of the van had dashed against a stationery tanker lorry due to his rash and negligent driving, the claimant sustained injuries and filed a claim petition.

3. During the pendency of the claim petition, the claimant died and the respondents 1 and 2, who are the parents of the deceased claimant, were impleaded as the parties in the claim petition. The owner of the lorry/the 3rd respondent remained ex parte before the Tribunal.

4. The appellant filed a counter denying the averments in the claim petition and stated that the deceased travelled in the van as a gratuitous passenger; and therefore the appellant is not liable to pay compensation.

5. The Tribunal held that the accident took place due to the negligent driving of the insured vehicle and fixed the liability on the



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appellant Insurance Company to pay compensation by holding that the deceased was not an unauthorised passenger.

6. The learned counsel for the appellant submitted that since the deceased was working as an Accountant in the company, which owned the milk van, and hence he cannot be construed as the owner of the goods authorised to travel in the van and therefore, the finding of the Tribunal directing the appellant to pay compensation is liable to be set aside.

7. The learned counsel for the respondents 1 and 2/the claimants, per contra, submitted that in the absence of any evidence to show that the deceased was an unauthorised passenger, the finding of the Tribunal fixing liability on the appellant cannot be faulted.

8. Notice to the 3rd respondent and 4th respondent is dispensed with vide order of this Court dated 24.11.2021. Thereafter, by order dated 19.01.2022, it was held that the 4th respondent, who is the owner of the offending vehicle, has to be heard and notice was ordered. Though notice to the 4th respondent was served and his name is printed in the cause list, none has entered appearance.



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9. The point for consideration in the instant appeal is as follows:

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Whether the appellant is liable to pay compensation as the deceased was a gratuitous passenger.

10. Heard both sides and perused the records.

11. Before the Tribunal, the claimants had examined P.W.1 and P.W.2 to prove the manner of accident and to establish the fact that the deceased was an authorised passenger. The claimant had marked Ex.P.1 and Ex.P.2 to corroborate the version of eyewitness to the occurrence. On the side of the appellant, except marking the policy document, no evidence was produced to show that the deceased was an unauthorised passenger.

12. In the light of the evidence on record, the Tribunal was right in holding that the deceased was an authorised passenger. Therefore, this Court finds that there is no infirmity in the finding of the Tribunal. Accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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13. The appellant is directed to deposit the compensation amount with interest as awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 are permitted to withdraw the same on filing a suitable application before the Tribunal.

02.09.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Motor Accidents Claims Tribunal cum Sub Judge, Palani

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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Judgment made in
C.M.A(MD)No.569 of 2020
and C.M.P(MD)No.5892 of 2020

02.09.2024