



C.M.A(MD)No.531 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)No.531 of 2019

and

C.M.P(MD)No.6251 of 2019

C.T.Sugi

... Appellant/1st Respondent

Vs.

1.Kannagi

2.Minor Pradeeb

3.Pappathi

4.Minor Pradeeba

... Respondents 1 to 4/Petitioners

5.The United India Insurance Company Ltd.,
represented by the Regional Manager,
Having Office at
1783/84, South Main Street,
Thanjavur.

... 5th Respondent / 2nd Respondent

(Minor 2nd and 4th respondents represented through
their mother natural guardian 1st respondent)



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.158 of 2010, dated 22.01.2016 on the file of the Motor Accidents Claims Tribunal (Sub Court), Pattukkottai and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.AN.Ramanathan
For R1 to R4 : No Appearance
For R5 : Mr.C.Jawahar Ravindran

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the Award dated 22.01.2016 passed in M.C.O.P.No.158 of 2010 by the Motor Accident Claims Tribunal/Sub Court, Pattukottai.

2. The 1st respondent in M.C.O.P.No.158 of 2010 is the appellant herein.



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3. The petitioners/claimants are respondents 1 to 4 herein, who filed the claim petition in M.C.O.P.No.158 of 2010. The 5th respondent herein is the Insurance Company, which is arrayed as 2nd respondent in the claim petition.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 158 of 2010 is adopted hereunder.

5. The brief facts of the case:

On 25.11.2005 the 1st respondent's bus bearing registration number TN 49 M 0031 was driven by its driver from Thanjavur to Aranthangi via Pattukottai. On the same day at 4.30 p.m., when the bus was driven by the driver in a negligent manner over a bridge on river near perumal temple noticing the flood water overflowing the bridge and banks, due to which the bus capsized. Due to impact, number of passengers died. In the said bus, one Karuppiah also travelled and died due to accident. The said Karuppiah was working as a van driver and was earning Rs.10,000/- p.m. F.I.R. was registered against the driver of the 1st respondent's bus.



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The offending vehicle was insured with the 2nd respondent. Hence, the petitioners, who are dependants of the deceased Karuppaiah, filed the claim petition seeking compensation of Rs.10,00,000/-.

6. The 1st respondent/owner of the bus TN 49 M 0031 objected that the petitioners already filed M.C.O.P.No.530 of 2005 before the Motor Accident Claims Tribunal, Pattukottai and the same is pending. The petitioners have filed multiple claim petitions before different Tribunals so, the petition is liable to be dismissed. The deceased Karuppaiah had not traveled in their bus during the occurrence period. The petitioners have to prove that the deceased was really travelling in their bus. During November, 2005 there was huge rain almost over the State, flooding many parts of the State. On 25.11.2005, the 1st respondent's bus was driven by experienced driver. There were 55 passengers travelling in the bus. At the occurrence bridge, the driver drove the bus in a very slow speed. So many people crossed the river with the causeway and walked, a jeep was also crossing the causeway. But, suddenly flood water levels shoot up and as a result, the bus was swept away in the floodwater to a distance about 50 feet.



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The accident did not happen due to negligence on the part of the driver. The accident was due to an act of god. The 1st respondent was not liable to pay compensation to the victims and dependants of victims. Moreover, the bus was insured with the 2nd respondent at the time of accident. The deceased was not a passenger in the bus. Hence, the petition is not maintainable.

7. The 2nd respondent/Insurance Company objected the claim petition by contending that at the occurrence place, on seeing overflowing flood over the bridge, the driver stopped the bus and refused to ply it over the bridge, but at the compulsion of the passengers, the driver drove the bus. Due to heavy flood, the bus capsized and the accident happened. There was over crowd in the bus. F.I.R. was registered against the 1st respondent's driver. In the bus large number of passengers travelled, i.e., more than the permissible passengers were allowed to travel by the 1st respondent. During the rainy season that too flood time, the Government has to take precautionary steps, but the government failed to do so. The government alone is responsible for the claim petitions. The deceased Karuppiah was not a passenger in the 1st respondent's bus at the time of accident. The



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petitioners have to prove the same and also the deceased avocation and income. The 2nd respondent is not liable to pay any compensation. Therefore, the petitioners are not entitled to any claim from the 2nd respondent.

8. Before the Tribunal both side adduced oral and documentary evidence. Petitioners examined two witnesses as P.W.1 and P.W.2 and marked 6 documents as Ex.P.1 to Ex.P.6. On respondents side, R.W.1 and R.W.2 were examined, but no document was marked. After hearing both and after considering the evidence, the Tribunal has held that the accident happened due to the negligence on the part of the driver of 1st respondent and awarded compensation of Rs.9,94,000/- to the petitioners with interest and cost. The Tribunal also held that the passengers were traveling beyond the permitted limit and hence, the Tribunal directed the 2nd respondent to pay compensation amount and to recover the same from the 1st respondent by straight away filing execution petition. Aggrieved by the said award, the 1st respondent has preferred this Civil Miscellaneous Appeal.



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9. The point to be determined is whether the deceased Karuppiah had travelled in the offending bus or not? And whether the 1st respondent is not liable to pay any compensation as awarded by the Tribunal?

10. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

11. It is the main contention of the counsel for the appellant/1st respondent that the deceased Karuppiah was not travelling in the bus at the time of accident. In the F.I.R. and Charge Sheet, the name of Karuppiah is not found place. As per evidence and records, at the time of occurrence, the passengers and also other persons who were riding bicycles and two wheelers and walkers also died. According to the appellant/1st respondent, 77 passengers travelled in the bus and they filed claim petitions and award also passed in those claim petitions. So, the appellant/1st respondent and the 5th respondent/2nd respondent Insurance Company specifically denied in their respective counter that the deceased Karuppiah was not travelling in the bus, whiles, it is the duty of the Tribunal to give a finding upon that



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aspect. But, the Tribunal has not given any finding whether the deceased Karuppiah had travelled in the bus or not, simply stating that there is no dispute and passed award. The petitioners have not produced any evidence to prove that the deceased Karuppiah was travelling in the bus. In the absence of any concrete evidence that the deceased Karuppiah was also one of the passengers, the petitioners are not entitled to any compensation. Hence, the award passed by the Tribunal is not correct and the same may be set aside.

12. The learned counsel for the claim petitioners/respondents 1 to 4 herein, has contended that the Tribunal observed in its order that out of the passengers travelled in the bus 50 passengers died and 40 passengers sustained injuries among them the deceased was also one of the passengers and there was no dispute in this aspect. Further, the P.W.1 was not cross-examined with regard to non-travelling of deceased Karuppiah in the bus. P.W.2 is an eyewitness, who gave evidence that the deceased was travelling in the bus.



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13. On hearing both and on perusal of records, it is clear that the accident took place while the bus was plying along the bridge and suddenly there was an increase of flood overflow and the bus capsized. In the accident, number of passengers died and sustained injuries. It is the case of the petitioners/claimants that the deceased Karuppiyah was also travelling in the bus. It is the specific contention of the appellant/1st respondent that the deceased was not travelling in the bus. On perusal of evidence of P.W.1, who is the wife of the deceased deposed in her chief that her husband Karuppiyah was travelling in the bus. On perusal of cross-examination, there is no question put to P.W.1 by the appellant/1st respondent as if the deceased was not travelling in the bus. Moreover, the eye witness was examined as P.W.2, who deposed that he and the deceased had travelled in the bus and as he knew swimming he escaped, but the deceased died. It is also pertinent to point out here that on perusal of evidence of R.W.1 and R.W.2, who were examined on respondent's side, both the said witnesses have not deposed that the deceased was not a passenger in the 1st respondent's bus. Moreover, it is evident from R.W.1 that 53 passengers died in the accident and totally 95 claim petitions were filed for seeking compensation. As per



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medical records, there is no dispute that the deceased died in the accident.

It is contended that the name of the deceased was not found in the F.I.R. and charge sheet. On perusal of F.I.R. and charge sheet, it was only mentioned that more than 70 persons travelled in the bus at the time of accident. When the appellant/1st respondent made a case that at the time of the accident the passengers and also the general public who were walking, riding their bicycles and two wheelers died, the deceased Karuppiah was one of the walkers, it is incumbent on the appellant/1st respondent to prove the same by producing acceptable materials. The appellant/1st respondent except objection has not placed any evidence to prove that the deceased was not a passenger except the contents of F.I.R., which is mentioned as more than 70 passengers in the bus. It is pertinent to note here that the 5th respondent/2nd respondent's Insurance Company has also not produced any evidence who contended that the deceased was not a passenger as contended by the appellant/1st respondent and has not placed any argument on this behalf. In such facts and circumstances, this court concludes that the deceased Karuppiah was also travelling in the bus at the time of accident and the observation of the Tribunal is sustainable.



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14. There is no dispute by the appellant/1st respondent in respect of fixing the income of the deceased and compensation under various heads awarded by the Tribunal. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

15. In view of the above facts and circumstances, the points are determined against the appellant/1st respondent.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 22.01.2016 passed by the Motor Accident Claims Tribunal/ Sub Court, Pattukottai in M.C.O.P.No.158 of 2010 is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

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NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To

- 1.The Motor Accident Claims Tribunal / Sub Court,
Pattukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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AND
P.VADAMALAI. J.

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