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C.M.A.No.1082 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.1082 of 2020
and C.M.P.No.6871 of 2020**

The National Insurance Company Limited,
Regional Office,
Near Sakthi Nursing Home,
Dr.Nanjappa Road, Coimbatore.

... Appellant

Vs.

1.Kowsalya

2.Minor A.Stephan

3.Minor A.Nelson

4.Minor Danial

5.Minor Hari

6.Minor Charles

Minor respondents 2 to 6 are represented by their natural guardian/
mother, first respondent

7.V.Ganesan

... Respondents



C.M.A.No.1082 of 2020

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2017 made in M.C.O.P.No.623 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

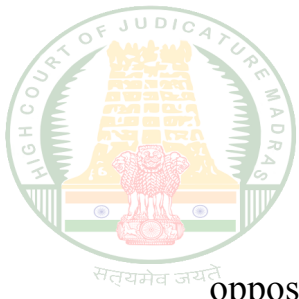
For Appellant : Mr.J.Chandran

For Respondents : No appearance for R1 to R7

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the liability fixed on the appellant/Insurance Company by the Tribunal vide impugned award dated 31.01.2017 made in M.C.O.P.No.623 of 2014.

2. The facts which are required for disposal of this appeal are that the deceased, namely, Alex Pushparaj, one Perumal and Sakthivel were working as loadmen at TCI Kaniyur. On 01.07.2013 at about 09.00 p.m., after completion of the load work, the respondent No.7 took them in his vehicle bearing Registration No.TCC 8777 insured with the appellant/Insurance Company and drove the vehicle in a rash and negligent manner and dashed behind the lorry bearing Reg.No.TN 20 AD 1446



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opposite to Rani Lakshmi Mill, Arasur, Avinashi to Coimbatore Main Road,

due to which, the deceased sustained fracture injury and died in the hospital.

The claimants/respondents 1 to 6, who are the dependents of the deceased, have filed a claim petition before the Tribunal and the Tribunal awarded a sum of Rs.11,16,000/- to the claimants and directed the appellant/Insurance Company to pay the compensation to the claimants. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant would submit that the vehicle of the respondent No.7 is a heavy goods vehicle where it is permitted to carry only goods and not for carrying the persons. The Secretary of Regional Transport Authority, Coimbatore, had issued the Goods carriage permit to carry only goods in the said vehicle and not for carrying persons as per Section 66 of the Motor Vehicles Act, 1988. However, the respondent No.7 allowed the deceased and the other persons to travel in a goods vehicle. Therefore, the appellant/Insurance Company is not liable to pay compensation to the claimants, who are unauthorised



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occupants in the vehicle. However, the Tribunal held that the deceased travelled in the lorry as a gratuitous passenger along with owner cum driver/respondent No.7 herein in the cabin having seating capacity of two persons apart from the driver for the purpose of unloading the goods and the deceased cannot be styled as a fare paying passenger and therefore, the claimants are entitled to get compensation. The said finding rendered by the Tribunal is contrary to the decision of the Hon'ble Apex Court of India in ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** He further submits that the policy/insurance pertaining to the vehicle insured with the second respondent is an Act Only Policy which covers only the driver cum owner of the vehicle and not the third party travelling in the lorry.

4. Heard the learned counsel appearing for the appellant. Though notice was served to the respondents, no one appeared before this Court on behalf of the respondents.



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5. Considering the pendency of this appeal, this Court is inclined to dispose of this appeal on the basis of the materials available on record.

6. A perusal of the records reveal that the deceased was employed with TCL Private Limited as loadman and he was not an employee of the respondent No.7/owner of the lorry. After completion of loading work in TCL Private Limited, the respondent No.7 allowed the deceased and other two persons to travel in the goods vehicle as passengers and the said vehicle dashed against the parked lorry, in which the deceased sustained fatal injuries and died in the hospital. It is clear from the above that the deceased and two other persons travelled as unauthorised passengers in the goods vehicle. Further, the deceased, not being an employee under the 7th respondent, even though premium has been paid in respect of employee by the 7th respondent, the deceased could only be termed to be a gratuitous passenger and therefore, no liability can be fastened against the appellant/Insurance Company to pay compensation to the claimants. Hence,



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this Court is inclined to set aside the award dated 31.01.2017 passed in M.C.O.P.No.623 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore and accordingly, it is hereby set aside. The appellant/Insurance Company is permitted to withdraw the amount, if any deposited by them before the Tribunal. However, liberty is granted to the respondents 1 to 6/claimants to recover the amount from the respondent No.7 in the manner known to law.

7. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

09.01.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Court, Coimbatore.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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