



C.M.A.(MD).Nos.823, 1455 and 750 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.823, 1455 and 750 of 2010
and
M.P(MD) Nos 1, 1 and 1 of 2010

C.M.A(MD) No.823 of 2010:

United India Insurance Company Limited.,
Branch Office, PLA Building,
12A Kovai Road,
Karur – 639 002.

.....Appellant/ 2nd Respondent

-vs-

1. Sundaram

... 1st Respondent/ Petitioner

2. T.Thangavel

.... 2nd Respondent /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of W.C Act, against the award dated 04.04.2005 made in W.C.No.173 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) at Dindigul.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.M.Karthikeya Venkatachalapathy
for R2
: Dismissed – for R1



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C.M.A(MD) No.1455 of 2010:

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United India Insurance Company Limited.,
Branch Office, PLA Building,
12A Kovai Road,
Karur – 639 002.

.....Appellant/ 2nd Respondent

-vs-

1. Aruna

... 1st Respondent/ Petitioner

2. T.Thangavel

.... 2nd Respondent /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of W.C Act, against the award dated 04.04.2005 made in W.C.No.174 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) at Dindigul.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance

C.M.A(MD) No.750 of 2010:

United India Insurance Company Limited.,
Branch Office, PLA Building,
12A Kovai Road,
Karur – 639 002.

.....Appellant/ 2nd Respondent

-vs-

1. Gobi

... 1st Respondent/ Petitioner

2. T.Thangavel

.... 2nd Respondent /1st Respondent



C.M.A.(MD).Nos.823, 1455 and 750 of 2010

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of W.C Act, against the award dated 04.04.2005 made in W.C.No.175 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) at Dindigul.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.M.Karthikeya Venkatachalapathy
for R2
: No appearance – for R1

COMMON JUDGMENT

All the appeals have been filed by the Insurance Company challenging the award passed by the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Dindigul on the ground of liability.

2. According to the claimants, all of them have travelled in a Mini Door Van, on 19.08.2002. The Mini Door Van belongs to the first respondent in the claim petition and was driven by one A.Murugesan. At about 10.00 a.m, due to the rash and negligent driving on the part of the Mini Door Van driver, the van got capsized and all the claimants were injured. The claimants have filed W.C.Nos.173 to 175 of 2004 before the Deputy Commissioner of Labour, Dindigul, seeking compensation.



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3. The Insurance Company had filed a counter contending that all the three claimants were gratuitous passengers and hence, they are not liable to pay any compensation under the Workmen's Compensation Act.

4. The Deputy Commissioner of Labour, after considering the oral and documentary evidence, had arrived at a finding that the accident has happened only due to the rash and negligent driving of the driver of the Mini Door Van. He further found that all the claimants have travelled in the vehicle only as loadmen and loadwomen. Therefore, the policy covers the loadmen travelling in a goods carriage. Based upon the said findings, a sum of Rs. 99,429/- was awarded in W.C.No.173 of 2004. A sum of Rs.47,866/- was awarded in W.C.No.174 of 2004 and a sum of Rs.51,973/- was awarded in W.C.No.175 of 2004. Challenging all the said awards, the present appeals have been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant/ Insurance Company, all the three claimants have travelled as gratuitous passengers in a goods vehicle. Therefore, they are not liable to receive any compensation from the Insurance Company. The Policy does not cover the gratuitous passengers who had travelled in the goods vehicles. Without



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considering the said aspect, merely on the basis of the Motor Vehicle Insurance Policy, the Workmen Compensation Commissioner has passed the award.

6. Per contra the learned counsel appearing for the second respondent had contended that the FIR that was registered immediately after the accident, would clearly indicate that all of them have travelled only as loadman in the vehicle. It is also contended that the driver, in the evidence deposed that all the claimants were loadman/load women who had travelled in the goods carriage. Therefore, the contention of the Insurance Company that they are gratuitous passengers, is not legally sustainable. Hence, he prayed for confirming the award passed by the Workmen's Compensation Commissioner in the three appeals.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. A perusal of Ex.P.1- FIR, would show that the accident has happened at about 10.00 a.m on 19.08.2002. FIR has been registered at about 08.15 p.m on the same day by one Palanichamy. A perusal of the said FIR will indicate



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that all of them have travelled only as loadman. In the claim petitions also, it has been stated that they have travelled only as loadmen and load women in the Mini Door Van. Therefore, it is clear that all the claimants have travelled in the said vehicle only as loadmen. A perusal of the Insurance Policy indicates that the seating capacity including the driver is two persons. Therefore, apart from the driver, one more person could also travel in the vehicle, for which, the Insurance premium has already been paid by the owner of the vehicle. In view of the policy condition, it is clear that the Insurance Company has to satisfy the award at least for one person who had travelled in the vehicle who is not the driver of the vehicle.

9. Three claimants have been awarded compensation on the ground that they have travelled as loadmen in the goods carriage. However, the policy covers only one loadman to be carried apart from the driver in the vehicle. In view of the settled position of law, one of the highest awards has to be satisfied by the Insurance Company and the rest of the two awards have to be satisfied by the owner of the vehicle.

10. Therefore, C.M.A (MD) No.823 of 2010 which arises out of in W.C.No.173 of 2004, in which, a compensation of Rs.99,429/- has been



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awarded is the highest award. Therefore, the said award has to be satisfied by the Insurance Company.

11. As far as the awards passed in W.C.No.174 of 2004 and W.C.No. 175 of 2004 are concerned, quantum of the award passed by the Deputy Commissioner of labour is hereby confirmed. However, the Insurance Company is exonerated from paying the said compensation. On the other hand, the first respondent in the claim petitions viz., the owner of the Mini Door Van is liable to pay the said compensation.

12. With the above said observations, C.M.A.(MD) No.823 of 2010 stands dismissed. C.M.A(MD) Nos.1455 of 2010 and 750 of 2010 are allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

26.04.2023

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

1. The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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