

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/4/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and

The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.1163 of 2017

Royal Sundaram Alliance Insurance
Company Limited
Sundaram Towers
No.45 & 46 Whites Road
Chennai 600 014.Appellant/2nd Respondent

vs

1. Lakshmi
2. Manju (minor)
rep. by the mother & next friend/R.1.
3. Periyapillai
4. Ashokan ...Respondents 1 to 4/Claimants
5. K. Muthusamy ...5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31/8/2016, made in M.C.O.P.No.674 of 2007 on the file of the subordinate Judge, Motor Accidents Claims Tribunal, Sankari.

For appellant

... Mrs.C.Harini for
M/s.M.B.Gopalan Associates

For respondents 1 to 4 ... Mr.C.Kulanthaivel

J U D G M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

In the accident, which occurred, on 16/3/2006, at 15.30 hours, on Vaikkalpalayam Road, near S.K.Ramasamy Thottam (Vandi Pathat Road), due to the negligent operation of the Tractor and trailer, bearing Registration Nos.TN36J-0544 and TN36J-0585, respectively, insured with Royal Sundaram Alliance Insurance Company Limited, Chennai, a sugar cane cutter-cum-load man,

aged 30 years, who came in contact with a live electric wire, died on the spot due to electrocution. In this regard, a case in Crime No.142 of 2006, under Section 304 A IPC, has been registered, on the driver of the Tractor-cum-trailer, on the file of Bavani Police Station.

2. Wife, minor daughter, mother and brother of the deceased filed M.C.O.P.No.674 of 2007, on the file of the learned Subordinate Judge, Sankari, claiming compensation of Rs.20 lakhs, under various heads.

3. Royal Sundaram Alliance Insurance Company/appellant herein, insurer of the Tractor-cum-trailer, opposed the claim petition, on the grounds inter alia that the deceased travelled as a gratuitous passenger and therefore, legal representatives of the deceased/respondents herein, are not entitled for compensation. Thus, they disputed the liability of the Company. Without prejudice to the above, they disputed the age, avocation, income and the quantum of compensation claimed under various heads.

4. Before the Tribunal, wife examined herself as P.W.1 and reiterated the averments made in the claim petition. P.Ws.2 and 3 are stated to be the co-employees, and eye witnesses to the accident. Ex.P.1 F.I.R, Ex.P.2 Motor vehicle Inspector's Report of the Tractor-cum-trailer, Ex.P.3 Post mortem report, Ex.P.4 charge sheet, Ex.P.5 Death certificate and Ex.P.6 legal heirship certificate have been marked, on the side of the legal representatives of the deceased/respondents. Officials of the Insurance Company and Transport Department have been examined as R.W.1 and R.W.2 respectively. Ex.R.1 copy of Insurance policy, Ex.R.2 letter of the Regional Transport Department, Ex.R.3 Extract from 'B' register have been marked.

5. On evaluation of pleadings and evidence, the Motor Accidents Claims Tribunal held that the accident occurred only due to the negligent driving of the driver of the Tractor-cum-trailer, who failed to notice that the deceased was arranging sugarcane, when the vehicle was operated and due to his negligence, the deceased came in contact with a live wire and electrocuted. Testimony of P.Ws.2 and 3 eye witness, co-employees remain in tact and corroborated by Ex.P.1 F.I.R and Ex.P.4 charge sheet. On the contra, there was no rebuttal. Manner of accident and avocation are proved by clinching evidence.

6. On the facts and circumstances of the case, the Tribunal came to the conclusion that the deceased was not a gratuitous passenger. On the contra, he was a load man. Fortifying the finding, the Tribunal has also noticed that during the course of cross-examination, R.W.2 Official from the Regional Transport

Department has also admitted that loadmen would be engaged in trailer.

7. Tribunal has taken note of a decision in New India Assurance Co. Ltd. Vs. Palani M. Samundeeswari, reported in 2010 (1) TN MAC 296, wherein , it has been held as follows:-

"The trailer was used for agricultural purpose of transporting sand and as claimant was sifting on the trailer for the purpose of connected to agricultural operations of owner, the Insurance Company is liable to pay the compensation to the claimants."

8. In yet another decision in New India Assurance Co. Ltd vs. P.Vinayagasundram and Others, reported in 2014 ACJ - 2483, this Court held that mere carrying a sand loaded in the trailer cannot be treated as a commercial load and the sand can also be used for agricultural purposes. Hence Insurance Company is liable to pay the compensation.

9. Thus, fastening the liability on Royal Sundaram Alliance Company Limited/appellant herein, the Tribunal, quantified the compensation, with interest, at the rate of 7.5% p.a., from the date of claim till realisation, as follows:-

Future prospects	...	Rs. 12,24,000
Loss of Consortium	...	Rs. 1,00,000
Loss of Love & Affection	...	Rs. 2,00,000
Funeral expenses	...	Rs. 25,000
Transport charges	...	Rs. 10,000

		Rs. 15,59,000

10. Though Ms.Harini, learned counsel for Royal Alliance Insurance Company Limited/appellant herein contended that the Tribunal has failed to appreciate the evidence on record, in proper perspective and arrived at an erroneous conclusion that the deceased was a loadman, not required to be covered by a policy of the Insurance and therefore, contended that liability ought not to have been fastened with the consequential direction, to pay compensation, this Court is not inclined to accept the said contentions, for the reason that the Tribunal, on evaluation of pleadings and evidence has properly assessed the evidence and found that the accident occurred when the deceased was engaged as a load man along with others, P.W.2 and P.W.3 and while arranging sugarcane in the Tractor cum trailer. Finding of the tribunal that he was engaged as a loadman cannot be said to be erroneous.

11. In the light of the above, we find no perversity and illegality in fastening liability on the appellant/Royal Sundaram Alliance Insurance Company Limited, Chennai, to pay compensation.

12. In the result, this Civil Miscellaneous Appeal is dismissed. Royal Sundaram Alliance Insurance Company Limited, Chennai/appellant is directed to deposit the entire award amount, to the credit of M.C.O.P.No.674 of 2007, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankari, within a period of four weeks, from the date of receipt of a copy of this order. Share of the minor/second respondent shall be deposited in a reinvestment scheme, in a Nationalised Bank, initially for a period of three years. Mother of the minor/first respondent is permitted to withdraw interest accrued on the share of the minor, once in three months. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mvs

To

The Subordinate Judge, Motor Accidents Claims Tribunal, Sankari.

+1cc to M/s.M.B.Gopalan Associates sr.20876

+1cc to Mr.C.Kulanthaivel, Advocate sr.20339

Civil Miscellaneous Appeal No.1163 of 2017

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ss(27/4/2017)

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