



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.441 of 2016andC.M.P(MD).Nos.5848 of 2016 and 1608 of 2017

The Divisional Manager,
The New India Assurance Company Ltd.,
Police Station Road,
Sivakasi.

... Appellant/3rd respondent
Vs.

1.M.Anbalagan, (died)	.. 1 st Respondent/1 st Petitioner
2.Sevathiammal	...2 nd Respondent/2 nd Petitioner
3.Kartheeshwaran	...3 rd Respondent/1 st Respondent
4.The Proprietor, Subburaj Match Company, No.44, Amman Kovil Street, Sivakasi.	.. 4 th Respondent/2 nd Respondent

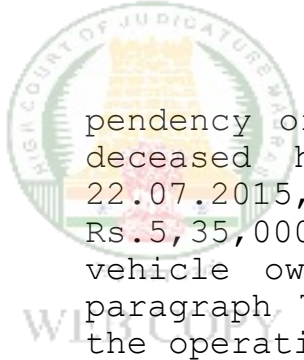
Prayer: The appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decretal order dated 22.07.2015 made in M.C.O.P No.23 of 2010 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Sivakasi.

For Appellant	: Mr.A.Ilango
For R-2	: Mr.P.Arun Jayatram for Mr.D.Sakkaravarthi
For R-3	: Mr.Jothi Basu
For R-4	: No Appearance

J U D G M E N T

Heard the learned counsel on either side.

2. The New India Assurance Company Limited has filed this appeal questioning the impugned award on the ground of liability. One Kalai Raj, son of the claimants was travelling in a power tiller bearing registered No.TN67-Y-7024 on 29.11.2009 at about 11.00 A.M, as an unauthorised occupant. He fell down from the power tiller and was ran over. He died on the spot. Crime No.1052 of 2009 registered on the file of the Sivakasi East Police Station, Sivakasi. He was aged about 12 years. The said power tiller was insured with the appellant herein. Therefore, the father of the deceased boy, filed M.C.O.P.No.23 of 2010 on the file of the Motor Accident Claims Tribunal [Subordinate Judge], Sivakasi. During the



pendency of the proceedings the father died and the mother of the deceased had come on record. The Tribunal, by award dated 22.07.2015, directed the appellant herein to pay a sum of Rs.5,35,000/- with interest and thereafter recover the same from the vehicle owner. Though this finding is specifically rendered in paragraph 7 of the impugned award, it did not find place either in the operative portion or in the decretal order.

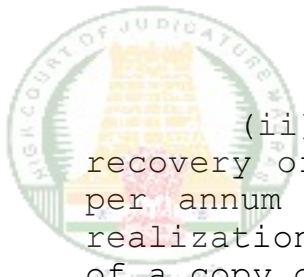
3. Contending that the Tribunal erred in fastening the liability on the appellant herein, this appeal has been filed.

4. The learned counsel appearing for the appellant pointed out that the vehicle in question, power tiller, is a single seater vehicle. It is primarily used for agricultural purposes. The insurance policy copy of the above said vehicle has been marked as Exhibit R.3. The Registration Book (R.C.) has been marked as Exhibit R.4. It is seen therefrom that the seating capacity including the driver is one only. The deceased in this case was a minor child of aged 12 years. Therefore, he could not have been employed in any capacity. Even in the First Information Report, marked as Exhibit P.1, it has been mentioned that the minor boy used to loiter along with the Sudhakar, the driver of the power tiller. Therefore, it is clear that the insurance policy did not cover any person other than driver of the said vehicle. Obviously, the deceased had been riding on the power tiller as an unauthorised and gratuitous occupant.

5. The learned counsel appearing for the appellant drew my attention to the decision of the Division Bench of this Court reported in 2012 (1) TNMAC 89 DB MS in Royal Sundaram Alliance Insurance Vs. Ayyakannu and others. It was held by this Court that when a goods vehicle carried a person who is not covered by the terms of the policy, the insurance company cannot be made answerable for the death or injury caused to that unauthorised person. I am of the view that the said decision is clearly applicable to the facts of the case.

6. The impugned award fastening the liability on the appellant insurance company is liable to be set aside. However, the claimant is entitled to proceed against the owner of the offending vehicle. It is seen that the R.C.Book stands in the name of the fourth respondent herein namely the Proprietor, Subbaraj Match Company, Sivakasi. The Tribunal has awarded a sum of Rs.5,35,000/- with interest to the claimant. The same calls for modification. The award in favour of the claimants falls under the following terms.

(i) The appellant insurance company is directed to pay a sum of Rs.50,000/- with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment to the second respondent herein.



(ii) The second respondent herein is entitled to proceed for recovery of sum of Rs.4,85,000/- with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment from the fourth respondent herein.

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7. The learned counsel appearing for the appellant submits that they had deposited 50% of the award amount. Since the direction to pay a sum of Rs.50,000/- with interest at the rate of 7.5% has been granted in favour of the claimant, it is open to the second respondent herein to withdraw the said amount with interest. The appellant Insurance company is entitle to withdraw the balance amount along with the accrued interest.

8.The award dated 22.07.2015 in M.C.O.P No.23 of 2010 on the file of the Motor Accidents Claims Tribunal [Subordinate Judge], Sivakasi is modified as indicated above. This Civil Miscellaneous Appeal is allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Motor Vehicle Accident Claims Tribunal.
Sivakasi.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.G.M.Law Office, Advocate, SR.No. 90276
+1CC to Mr.A.Ilango, Advocate, SR.No. 90133
+1CC to Mr.D.Sakkaravarthi, Advocate, SR.No. 90198

C.M.A. (MD) No.441 of 2016
29.11.2017

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AM/SV MMS/SAR 4/01.02.2018/3P/7C