



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2017
(Reserved on 19.07.2017)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)Nos.1157 and 1158 of 2013

CMA(MD)No.1157 of 2013

1)Nallaiyan
2)Mohanraj
3)Nagendiran
4)Minor Vanaraj

(Rep by father and guardian
1st Appellant herein)

... Appellants

vs.

1)V.Mohan

2)Oriental Insurance Co.Ltd.,
I-Floor, Loyola Building,
Salai Road, Dindigul-624 001.

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 29.09.2011 made in MCOP.No.142 of 2010 on the file of Motor Accidents Claims Tribunal (Principal District Court), Theni.

For Appellant : Mr.K.Appadurai
For R2 : Mr.K.Bhaskaran

CMA(MD)No.1158 of 2013

Easwari

... Appellant

vs.

1)V.Mohan

2)Oriental Insurance Co.Ltd.,
I-Floor, Loyola Building,
Salai Road, Dindigul-624 001.

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 29.09.2011 made in MCOP.No.206 of 2010 on the file of Motor Accidents Claims Tribunal (Principal District Court), Theni.



For Appellant : Mr.K.Appadurai
For R2 : Mr.K.Bhaskaran

COMMON JUDGMENT

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These Civil Miscellaneous Appeals have been filed against the fair and decreetal order dated 29.09.2011 made in MCOP.No.142 and 206 of 2010 on the file of Motor Accidents Claims Tribunal (Principal District Court), Theni.

2.On 05.06.2010 about 11.00 a.m., one Lalitha wife of the 1st appellant and mother of appellants 2 to 4 in CMA.1157/13 and one Bommuthai w/o.Manikandan and Easwari w/o. Veeraiah, appellant in CMA.1158/13 travelled as coolies in a Tractor bearing registration No.TN-20-E-7693 attached with corn grass harvesting machine in the garden of Tirupati Chettiar. The said Lalitha sat on the mudguard of the Tractor. While the Tractor was proceeding in corn grass field, due to rash and negligent driving of the driver of the Tractor, the Tractor sloped on its right side, in which, Lalitha who sat in the mudguard of the Tractor fell down and the Tractor also pushed her with the corn grass field while it slopes, resulting in instantaneous death of Lalitha and Bommuthai and grievous injuries to Eswari. Husband and children of Lalitha who are appellants in CMA.1157/13 and the injured claimant Eswari, appellant in CMA.1158/13 filed claim petitions in MCOP.No.142 and 206 of 2010 on the file of Motor Accidents Claims Tribunal (Principal District Court), Theni, claiming compensation. The 2nd respondent insurance company with whom, the Tractor involved in the accident was insured, filed counter affidavit contending that instead of using the Tractor for agricultural purpose, the same was used attaching corn grass harvesting machine and employees were carried in the Tractor contrary to the insurance policy and therefore, the insurance company is not liable to pay compensation.

3.Upon analysis of oral and documentary evidence on either side and accepting the said contention of the insurance company, the Tribunal by common judgment and decree dated 29.09.2011 made in MCOP.No.142 and 206 of 2010, exonerated the insurance company and fastened liability on the 1st respondent/owner of the Tractor to pay compensation of Rs.4,10,000/- and Rs.50,000/- respectively to the claimants with 7.5% interest from the date of claim petition till the date of payment. Aggrieved by the finding of the Tribunal exonerating the insurance company from its liability to pay compensation, these appeals have been filed.

4.The 2nd respondent insurance company in support of their contention that they are not liable to pay compensation, relied on the following judgments:-

(a) M.V. Jayadevappa vs. Oriental Fire and General Insurance Co.Ltd., reported in 2005 (2) TN MAC (SC) 515.

(b) Oriental Insurance Co.Ltd., vs. Pauldurai reported in 2012 (1) TN MAC 545.

(c) Oriental Insurance Co.Ltd., vs. Chitra reported in 2011 (1) TN MAC 636.

(d) Iffco-Tokio General Insurance Co.Ltd., vs. Tmt. Sulochana and others reported in 2008 (2) TN MAC 302.

(e) C. Pinniammal vs. Jakkammal and others reported in 2017 (1) TN MAC 662.

(f) Oriental Insurance Co.Ltd., vs. Anil Kumar and others reported in II (2013) ACC 699 (P&H)

(g) Oriental Insurance Co.Ltd., vs. Ishwanti and others reported in IV (2013) ACC 636 (P&H)

5. Although the appellants in both the appeals, have raised so many grounds assailing the impugned judgment and relied on the following judgements in support of the same,

(a) S. Iyappan vs. United India Insurance Co.Ltd., reported in (2013) 7 SCC 62.

(b) United India Insurance Co.Ltd., Ariyalur, vs. Panjavarnam and others reported in 2017 (3) L.W 383.

(c) New India Assurance Co.Ltd., vs. Rekhaben Bharkat Kumar Nanalal Thakkar reported in 2016 (1) TN MAC 606 (DB)

(d) Oriental Insurance Co.Ltd., vs. Mottaiammal reported in 2007 (1) CTC 234.

(e) United India Insurance Co.Ltd., vs. Sardari Lal reported in 2006 ACJ 943.

this Court is of the view that ground No.8 in the Memorandum of Grounds of Appeals, wherein, it is stated that connected claim petition in MCOP.No.21/2012 has been allowed by the learned Additional District Judge, Periyakulam, on 29.01.2013, by directing the 2nd respondent insurance company to pay compensation, can be given significance to resolve the issue raised in the appeals that whether the Tribunal is right in exonerating the insurance company from its liability to pay compensation.

6. Perusal of the order made in MCOP.No.21/2012 dated 29.01.2013, shows that the said claim petition was filed by the husband and children of the deceased Bommuthai who died in the very same accident, in which, Lalitha died and Eswari got injured. In the said case, although the insurance company relied on a judgment in Smt. Thokchom Ongi Sangeetha alias Sangi vs. Oriental Insurance Company Limited and others reported in 2008 (1) TNMAC 59 and contended that as per Section 147(1) of the Motor Vehicles Act, the insurance company ought to be exonerated, the Tribunal rejecting the contention of the insurance company went into the merits of the case elaborately. The Tribunal observed that the Tractor in question has to be used for agricultural purpose and



Tractor and corn grass harvesting machine cannot be used independently and they have to be attached for proper usage. Further, the insurance company has agreed that the said Tractor is insured with Kissan Package Policy and the policy was marked as Ex.P6 and Assistant Manager has been examined as RW1 who deposed that the deceased Bommuthai travelled in the Tractor as coolie and as per the Tariff, premium was collected for corn grass harvesting machine and as per the policy, the Tractor is to be used for agricultural purposes and Tractor alone cannot be used for agricultural purpose.

7.Relying upon the entries in Ex.P6-insurance policy of Tractor namely, 'I.M.T29-LL employees', the claimants contended that the said policy is applicable for coolies also, for whom, premium of Rs.25/- was paid and therefore, the insurance company is liable to pay compensation. However, the said submission was denied stating that the word, 'I.M.T29-LL employees' meant only drivers and therefore, policy is applicable for drivers only. But, the same was specifically repudiated by the claimants stating that in the policy itself, there are headings namely, driver, conductor and cleaner etc., and therefore, the policy is applicable to the deceased Bommuthai who was a coolie.

8.Perusal of the order made in MCOP.No.21/2012 dated 29.01.2013, further shows that RW1 examined on the side of the insurance company has deposed that I.M.T29-LL indicates payment of premium for workers and under that heading, Rs.25/- was paid. The Tribunal relying on the entries in the policy, namely, 'I.M.T29-LL employees' observed that the said entry denotes employees and policy of the Tractor is Kissan Package Policy. The Tribunal further held that for agricultural works, coolies will be engaged and for them Rs.25/- has been paid as premium and therefore fastened liability on the insurance company to pay compensation.

9.In my considered opinion, the order made in MCOP.No.21/2012 dated 29.01.2013, is squarely applicable to the facts of the present case. Accordingly, the judgment and decree dated 29.09.2011 made in MCOP.No.142 and 206 of 2010 is modified to the effect that the 2nd respondent insurance company shall pay compensation of Rs.4,10,000/- and Rs.50,000/- respectively with 7.5% interest from the date of claim petition till the date of payment and they shall deposit the said amount with interest and costs to the credit of MCOP.Nos.142 and 206 of 2010 on the file of Motor Accidents Claims Tribunal (Principal District Court), Theni, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the appellants/claimants in both the appeals are permitted to withdraw their respective shares with interest by making necessary applications before the Tribunal.

The 1st respondent in CMA.1157/13 was minor aged 16 years on the date of filing of the claim petition in 2010 and now he would have



attained majority. Hence, he is permitted to withdraw his share with interest by making necessary application before the Tribunal.

In the result, these Civil Miscellaneous Appeals are allowed.
No costs.

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Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Principal District Court,
Theni.

+1cc to Mr.K.Appadurai, Advocate Sr.No.93773

+4cc to Mr.K.Bhaskaran, Advocate Sr.No. 66473,66474, 93558,93559

BALA

VB/KKR/SAR4/01.03.2018/5P/7C

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