

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1611 of 2014  
and M.P.Nos.1 and 2 of 2014  
and CMP.No.4654 of 2016

United India Insurance Co.Ltd.,  
Office at Block No.21,  
District Shopping Centre Sector No.21,  
Gandhi Nagar, Gujarat, India ...Appellant/3<sup>rd</sup> respondent.

Vs.

1.M.Jothi  
2.P.Maikannan ..Respondents 1 and 2/  
Petitioners.

3.M/s.Kalpataru Power  
Transmission Ltd,  
Office at No.101, Part III GIDC  
Estate Sector 28, Gandhi Nagar  
Gujarat, India.

4.Arjun Singh ...Respondents 3 and 4/  
Respondents 1 and 2.

Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act against the judgment and decree dated  
12.08.2013 made in MCOP.No.306 of 2013 on the file of the Motor  
Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For appellant : : Mr.S.Arunkumar  
for Respondents : : Mr.S.Sadashram for R1 and R2.  
Mr.T.Gowthaman for R3.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the  
appellant/Insurance Company, challenging the judgment and decree  
dated 12.08.2013 made in MCOP.No.306 of 2013 on the file of the  
Motor Accident Claims Tribunal, Special Subordinate Judge,  
Tirupattur.

2. For the sake of convenience, the parties are referred to  
as per their litigative status before the Tribunal. It is a  
fatal case. The case of the Petitioner is that on 24.05.2006

while the deceased Rajukumar travelled from his workspot to his Camp at Gassar in the Tractor bearing Reg.No.UP-32-Z-5636 at about 6.00 p.m., while going near Mahatwani Road, Unnao District, Uttar Pradesh, another vehicle came in the opposite direction and in order to give way to the Opposite vehicle, the driver of the Tractor in which the deceased travelled, moved to the side of the road, lost control and the vehicle capsized. The deceased fell down on the left side of the road, suffered head injury and died on the spot. The accident occurred only due to the negligence of the driver of the Tractor owned by the 2<sup>nd</sup> respondent and insured with the 3<sup>rd</sup> respondent. The deceased was employed with the 1<sup>st</sup> respondent. At the time of the accident, the deceased was aged 24 years. By working as an Electrician with the 1<sup>st</sup> respondent Company, was earning Rs.7500/- per month. The Petitioners who are parents of the deceased have lost their only son. The Petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondents.

3.1. On the other hand, opposing the claim of the Petitioners, by filing counter, the 1<sup>st</sup> respondent contends that the deceased Rajkumar was employed as Fitter and Electrician in the company and on 24.05.2006, after finishing his work in the 1<sup>st</sup> respondent's company site, he was travelling in the Tractor bearing Reg.No.UP-32-Z-5636 to his Residential accommodation. As the said Tractor met with the accident, the deceased Rajkumar fell down and sustained fatal injuries resulting in his death on the spot. As the incident took place, after working hours, the 1<sup>st</sup> respondent is not liable to pay compensation under the provisions of Workmen Compensation Act. Thus, the 1<sup>st</sup> respondent sought for dismissal of the petition against them.

3.2. Similarly opposing the claim of the Petitioner, by filing counter, the 3<sup>rd</sup> respondent/Insurance company contends that the accident does not occur due to rash and negligent driving of the Tractor driver. The said Tractor bearing Reg.No.UP-32-Z-5636 was not insured with them. The victim was covered under the Workmen Compensation Policy issued by the Insurance company from 15.07.2005 to 14.07.2006. Since the said policy covers only those accidents arising out of and in course of employment, the Petitioners are not entitled to seek any compensation from the 3<sup>rd</sup> respondent. As the deceased met with the accident, after working hours, the petition is not maintainable. The claim of the Petitioner about the age, avocation and income of the deceased is denied. The Petitioners' claim is highly excessive. The 3<sup>rd</sup> respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.6 to prove their claim.

On the side of the respondent, R.W.1 was examined, documents Ex.R.1 to Ex.R.5 was marked.

5. The Tribunal, after analyzing the evidence on record found negligence of the 2<sup>nd</sup> respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.10,12,000/- payable by the 3<sup>rd</sup> respondent as the vehicle was insured with them and accident occurred during the course of employment of the deceased with the 1<sup>st</sup> respondent. Aggrieved over the said finding of the Tribunal, the 3<sup>rd</sup> respondent/Insurance company has come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the appellant/Insurance company/3<sup>rd</sup> respondent contends that the 1<sup>st</sup> respondent company has obtained only Workmen Compensation Policy from the 3<sup>rd</sup> respondent/Insurance company. The Petitioners are not entitled to claim any amount before the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act. The Tribunal failed to consider the admission of P.W.2 that he was at his village while the accident occurred and as such, his evidence regarding working along with the deceased and about the accident cannot be taken into consideration. The Tribunal wrongly held that the deceased died during the course of employment. The Tribunal erred in applying notional extension theory to conclude that the deceased died in the course of employment. The Tribunal failed to consider properly Exhibits R5 and R6. The reasoning of the Tribunal and the quantum of the award passed by the Tribunal are unsustainable and devoid of merits. The 3<sup>rd</sup> respondent/Insurance company, the appellant herein sought for setting aside the award by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioners/claimants contends that the deceased was employed in laying electrical lines and the work was going on in a remote place where there is no other mode of transport. All the workers of the 1<sup>st</sup> respondent/company including the deceased were usually travelling in the company hired tractors to the work spot and back to their accommodation place provided by the 1<sup>st</sup> respondent management itself. Thus the Petitioner/claimant contends that

the deceased travelled in the Tractor belonging to the 2<sup>nd</sup> respondent and hired by the 1<sup>st</sup> respondent in the course of employment and met with the accident. As such, the Petitioner/claimant contends that they are entitled to seek compensation from the respondents u/s.166 of Motor Vehicles Act, as the accident occurred only due to negligence of the 2<sup>nd</sup> respondent-Tractor driver. Thus the petitioner/claimant sought for dismissal of the appeal.

9. The learned counsel for the 1<sup>st</sup> respondent/employer of the deceased contends that the vehicle involved in the accident was not hired by them and they never engaged such vehicles to carry employees to the company and back home to the accommodation. It is further contended that the deceased was returning home after completion of office work and as such, the accident does not occur during the course of employment. Therefore, the 1<sup>st</sup> respondent/employer contends that they are not liable to pay any compensation to the Petitioner.

10. This appeal is filed challenging the conclusion of the Tribunal in respect of liability of the 3<sup>rd</sup> respondent/Insurance company to pay the compensation. The fact that the deceased was employed as Fitter/Electrician with the 1<sup>st</sup> respondent company and he was working at Lucknow, Uttar Pradesh and while he was returning home after completion of work on 24.05.2006, due to the accident which took place at Mahatwani Road, Unnao District, Uttar Pradesh, he died is admitted by both sides. The Petitioners produced copy of the FIR as Ex.P.1 and copy of the Post Mortem Certificate as Ex.P.2. The Petitioners also produced copy of the Inquest Report as Ex.P.3. It is also clear from the same that the deceased died in the accident which took place as stated above on 24.05.2006.

11. Now it is to be seen as to whether the vehicle belonging to the 2<sup>nd</sup> respondent involved in the accident was insured with the 3<sup>rd</sup> respondent and whether the accident took place during the course of employment of the deceased with the 1<sup>st</sup> respondent concern.

12. The Petitioners have not produced any Insurance Policy for the Tractor involved in the accident. The Workmen Compensation Policy taken by the 1<sup>st</sup> respondent company for their employees with the 3<sup>rd</sup> respondent is produced as Ex.P.6. It is apparent from the evidence available on record that the Tractor

belonging to the 2<sup>nd</sup> respondent did not have any insurance on the date of the accident with the 3<sup>rd</sup> respondent /insurance company. As such, the questions to be answered in this appeal are :-

(i) as to whether the accident took place during the course of employment and if so,

(ii) Whether the Petitioners are entitled to seek compensation under Ex.P.6-Workmen Compensation Policy taken by 1<sup>st</sup> respondent company with the 3<sup>rd</sup> respondent-Insurance company.

13. In the case on hand, there is no evidence let in by the Petitioners to prove that the work spot stated above wherein the deceased was employed has no other mode of transport, other than the vehicles belonging to or hired by the 1<sup>st</sup> respondent company. Further, there is no evidence to show that the deceased or other employees were usually carried to the work spot and taken back home in the 1<sup>st</sup> respondent hired vehicles. Likewise, there is no evidence to show that the Tractor bearing Reg.No.UP-32-Z-5636 which caused the fatal injuries to the deceased was hired by the 1<sup>st</sup> respondent at the relevant point of time.

14.1. It is contended by the 1<sup>st</sup> respondent that after the completion of work, while the 1<sup>st</sup> respondent was returning home, he met with an accident. There is no evidence available on the Petitioners' side to show that the accident occurred only during the course of employment. It is obvious from the averments stated in the counter filed by the 1<sup>st</sup> respondent that there was no provision of transportation given to their employees for reaching their homes. In such circumstances, it is clear that the accident occurred outside the working hours and therefore, the Petitioners are not entitled to get any compensation under Ex.P.6-Workmen Compensation Policy before the Tribunal.

14.2. The Tribunal has relied upon the evidence of P.W.2 who claims to be a co-worker of the deceased. He stated that the accident occurred while the deceased was on employment and usually the mode of transport is the Tractor hired by the 1<sup>st</sup> respondent. However, P.W.2 in his chief examination has stated that he came to know about the accident from one Supervisor who allegedly witnessed the accident in person. P.W.2 also stated that he was at home town at the time of the accident. P.W.2 has not produced any document to show that he was employed in the 1<sup>st</sup> respondent company. He also stated that he did not know about the accident personally and he is not aware of the Registration number of the vehicle involved in the accident. Even though P.W.2 stated that himself and deceased were employed with the 1<sup>st</sup>

respondent company at a remote place in Uttar Pradesh without road facility in a forest area and they carried Electrical Instruments in the Lorry hired by the owner of the company, there is no proof available on record, to show that P.W.2 was employed with the 1<sup>st</sup> respondent/company. Further there is no proof regarding hiring of the 2<sup>nd</sup> respondent Tractor involved in the accident by the 1<sup>st</sup> respondent company. As such, the Tribunal is not justified in relying upon P.W.2 evidence to come to the conclusion that the accident occurred during the course of employment and the Tractor involved in the accident is hired by the 1<sup>st</sup> respondent company to transport the workers. Further there is nothing on record to show that any special permission was obtained by the 1<sup>st</sup> respondent for proving conveyance of their workers in the hired tractors. As such, the conclusion of the Tribunal based on P.W.2 evidence is not proper and the same is set aside.

15. Similarly as there was no policy coverage for the Tractor owned by 2<sup>nd</sup> respondent with the 3<sup>rd</sup> respondent/Insurance company, the Petitioners are not entitled to ask for any compensation under the Motor Vehicles Act. Likewise, the Petitioners have not proved the fact of the deceased travelled in the R-2 Tractor with the knowledge of the 1<sup>st</sup> respondent and met with the accident while on duty. Thus, the Petitioners have not let in any evidence to prove the fact that the accident occurred during the course of employment or the Tractor bearing Reg.No.UP-32-Z-5636 was hired by the 1<sup>st</sup> respondent or the said vehicle was insured with the 3<sup>rd</sup> respondent. Thus, having failed to establish the above said facts, the Petitioners are not entitled to seek any compensation from the 3<sup>rd</sup> respondent/Insurance company as there was no policy coverage on the date of the accident. Therefore, the conclusion of the Tribunal that the 3<sup>rd</sup> respondent/Insurance company is liable to pay the compensation to the Petitioners is unsustainable and the same is liable to be set aside.

16. However the fact that due to negligence of the driver of the 2<sup>nd</sup> respondent-Tractor the accident occurred is clearly proved by the contents of Ex.P.1-FIR and the evidence of P.W.2. There is no contra evidence let in by the other side in that regard. Further the Tractor bearing Reg.No.UP-32-Z-5636 belongs to the 2<sup>nd</sup> respondent is not denied or disputed. In such circumstances, the Petitioners are entitled to seek compensation from the owner of the Tractor, viz., the 2<sup>nd</sup> respondent.

17. The Tribunal, on the basis of evidence available on record, has arrived at Rs.10,12,000/- as compensation payable to the Petitioners/Claimants. The same is based on proper consideration of the evidence and the quantum of the award arrived at is just and proper. Further, the quantum of the award is not challenged or disputed before this court. As such, the sum of Rs.10,12,000/- awarded by the Tribunal as compensation to the Petitioners is confirmed.

18. In the light of the above said discussion, the plea of the appellant/3<sup>rd</sup> respondent-Insurance company is to be entertained and the award passed by the Tribunal against them is liable to be set aside. The Point is answered accordingly.

19. In the result, this Civil Miscellaneous Appeal is Partly allowed. The award passed by the Tribunal in MCOP.No.306 of 2013 is set aside as against the 3<sup>rd</sup> respondent/appellant/Insurance company herein. The award in all other respects is confirmed. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accident Claims Tribunal,  
Special Subordinate Judge, Tirupattur.

2. The Section Officer  
VR Section,  
High Court, Madras

+1cc to Mr.S.Sadashram, Advocate SR.NO.45476

AK(CO)  
sm:29.8.2018

C.M.A.No.1611 of 2014