

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1562 of 2007
and M.P.No.1 of 2007

New India Assurance Co.Ltd.,
Pondicherry. Appellant /3rd Respondent

Vs

1.AmmaponnuRespondents 1 to 5/Petitioners
2.Viswanathan
3.Minor Vijayalakshmi
4.Minor Vijaya
5.Minor Vijayakumar
(R3 to R5 minors represented by R1)
6.Dhamothara Naidu6th Respondent/1st Respondent
7.M/s.Oriental Insurance Co. Ltd.,
Pondicherry.7th Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.09.2004 made in MCOP No.872 of 2003 on the file of the Motor Accidents Claims Tribunal, District Judge, Fast Track Court-2, Cuddalore.

For Appellant : M/s.R.Sreevidya

For Respondents: Mr.B.B.Senthil Kumar - for R1 to R5
Mr.S.Arun Kumar - for R7

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.4,00,000/- towards compensation to the respondents 1 to 5, for the death of one Selvaraj, who died in a motor vehicle accident.

2.The case in brief, is as follows:

On 26.01.1997, the first respondent's husband Selvaraj was riding bicycle on the Kurinjipadi - Naduveerappattu Main Road. One Palanivel was travelling as pillion rider in the bicycle. At that time, the tractor bearing Reg.No.TCF-1225 and two Trailers bearing Reg.Nos.TCF-8013 and TCF-

4217, belonging to the sixth respondent came in a rash and negligent manner and dashed against the bicycle. The Tractor bearing Reg.No.TCF-1225 and the Trailer bearing Reg.No. TCF-8013 were insured with the seventh respondent Insurance Company and the 2nd Trailer bearing Reg.TCF-4217 was insured with the appellant Insurance Company. Due to the said impact, the first respondent's husband Selvaraj sustained grievous injuries and died on the spot. The legal heirs of the deceased, viz., respondents 1 to 5 filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,00,000/-, with interest at the rate of 9% per annum from the date of petition. Giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the tractor, the Tribunal fixed the liability on the appellant Insurance Company and the seventh respondent Insurance Company, equally, to pay the compensation to the claimants.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company contended that the Tribunal failed to note that no liability can be fastened on the appellant since the Tractor bearing Reg.No.TCF-1225 and the Trailer bearing Reg.No.TCF-8013 were insured with the seventh respondent Insurance Company and the 2nd Trailer bearing Reg.TCF 4217 alone was insured with the appellant herein. The learned counsel further submitted that the Tribunal failed to note that the terms of the policy clearly indicate that the Tractor is permitted to tow only one trailer at a time and a tractor proceeding with two trailers is contrary to the terms of the policy and hence the appellant is not liable to pay the compensation. However, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

5.The learned counsel for the respondents 1 to 5 submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5 / claimants, learned counsel for the seventh respondent and perused the materials available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed,

the same need not be interfered with by this Court.

8.It was put forth on behalf of the appellant Insurance Company before the Tribunal that the sixth respondent had violated the conditions laid down in the policy, since the policy clearly indicates that the Tractor is permitted to tow only one trailer at a time and a tractor proceeding with two trailers is contrary to the policy terms. Considering the materials and evidence available on record, while coming to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tractor, the Tribunal fixed the liability on the owner of the tractor and trailers and both the insurance companies, holding that the insurance companies have not properly clarified as to which rule of the insurance policy has been violated. But the fact remained that there was violation of policy conditions by the owner of the tractor and trailers by allowing a person to drive the tractor with two trailers. In these circumstances, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimants with liberty to recover the same from the owner of the tractor and trailers, ie., the sixth respondent herein, in accordance with law.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The respondents 3 to 5 would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 5 / claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle, the sixth respondent herein, for recovery of the compensation amount, in accordance with law.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

1.Motor Accidents Claims Tribunal
District Judge, Fast Track Court-2
Cuddalore.

2.The Section Officer
V.R.Section, High Court, Madras.

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.72824

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.72183

C.M.A.No.1562 of 2007

NRL(CO)
CB(02/09/2020)



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