IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3155 of 2005
and C.M.P.No.16289 of 2005

Branch Manager, National Insurance Co. Ltd.,
Branch office, 81-D Chetty Street,
Thiruchencode ..Appellant / 2nd Respondent

..vs..

1. Erappa
2. Pappamma
3. Santhamma
4. Thirumalesh .. Respondents 1 to 4/Petitioners 1 to 4
5. M.Ranganathan

(R-5 exparte before the Court below)
.. 5th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.01.2005, made in M.C.O.P.No.318 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate No.2 (Incharge), Dharmapuri District at Krishnagiri.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : Mr. K.Sundaramurthy, for R-3 & R-4.

No Appearance : For R-1, R-2.

J U D G M E N T

This Appeal has been filed by the Insurance Company, challenging the liability to pay compensation of Rs.1,99,000/-.

2. Brief facts, which are essential to appreciate the contentions raised by the Insurance Company, are as follows:-

Erappa, Pappamma, Santhamma and Thirumalesh, aged 55, 47, 35 and 19, (father, mother, wife and son) respectively, all the four together, have filed a claim petition for compensation in respect of the death of Thimmappa, in an accident on 05.03.2003. The deceased Thimmappa, aged 40, an agriculturist as well as doing loading and unloading coolie in Tractors, earning a sum of Rs.4,000/- per month, died in the accident on 05.03.2003. The accident is said to have taken place when the deceased was travelling, as Loadman, in the vehicle (Tractor) bearing Registration No.TN29-W-3042, belonging to the fifth respondent herein, namely, M.Ranganathan, the first respondent before the Tribunal. It is alleged that the tractor was driven in a rash and negligent manner and thus Thimmappa fell from the moving vehicle. On account of the same, he sustained fatal injuries on his vital organs. Immediately, he was taken to Andal Hospital at Hosur and admitted as inpatient. Despite best treatments, he died on the same day, i.e., on 05.03.2003 at about 03.55 pm. So alleging, the claim petition, claiming a sum of Rs.10,00,000/-, has been filed as against the owner / fifth respondent and Insurance Company / appellant herein of the tractor.

3. The Insurance Company, as the second respondent before the Tribunal, filed the counter opposing the claim made by the Legal Representatives on grounds that the deceased travelled in the tractor as the unauthorized passenger; and the policy does not cover either coolie or any of the passengers and therefore, the Insurance Company is not liable to pay any compensation.

4. The Tribunal, on a consideration of the materials placed before it, came to the conclusion that the deceased had travelled in the tractor in the capacity as Loadman and not in the capacity as unauthorized passenger and therefore, the deceased, being a person, authorised to travel in the vehicle and hence, the Legal Representatives of the deceased are entitled to compensation from the Insurance Company. By holding so, the Tribunal awarded a sum of Rs.1,99,000/- as compensation payable to the Legal Representatives of the deceased. Aggrieved over the same, the present Appeal has been filed.

5. The learned counsel appearing for the appellant / Insurance Company would submit that the deceased had travelled in the mud guard portion of the tractor and as there was no seating capacity for the tractor, it was clearly a travel, which is unauthorized and therefore, the Insurance Company is not liable to pay compensation.

6. The learned counsel appearing for respondents 3 and 4 / claimants, by relying upon the terms and conditions of the Insurance policy, would submit that, as the person has travelled in the vehicle as the Loadman / coolie, there is coverage under the policy and therefore, the Insurance Company must be directed to pay the entire amount of compensation and in support of the said contention, the learned counsel relied upon the decision reported in 2015 ACJ 140 (New India Assurance Co. Ltd., v. Raman and others).

7. This Court has considered the submissions made by the learned counsel for both sides and perused the materials available on record.

8. From the narration of facts and events and evidence available on record, it is clear that the deceased had travelled in the tractor in the capacity as Loadman and not in the capacity as unauthorized passenger and therefore, the deceased, being a person, authorised to travel in the vehicle and hence, the Legal Representatives of the deceased are entitled to compensation from the Insurance Company.

9. It is pertinent to note that in the decision reported in 2015 ACJ 140 (New India Assurance Co. Ltd., v. Raman and others), it has been held that when the deceased was working as Agricultural coolie and the policy covered the risk of driver, coolies and other employees connected with the operation of loading / unloading of the vehicle, the Insurance Company is liable to pay compensation. The relevant observations, viz., paragraphs 8 and 9, read thus:-

> "8. In Exh.R-1, copy of the policy certificate, it is found as follows:-
>
> > "LIABILITY TO PUBLIC
> > ADD: Legal liability to driver / coolies / other employees in connection with the operation and / or maintaining and / or unloading of motor vehicle, Endtt. 17 (1) Person (s).
> > ADD: For increased third party property, damage risks, Section II-I (ii) Endtt. 709 Unlimited Amount."
>
> 9. The above said entries incorporated in the policy would make abundantly clear that there was contract between the owner of the vehicle and the insurance company and hence the insurance company has to be anchored with the liability to pay the compensation. In such view of this matter, the award passed by the Claims Tribunal deserves to be confirmed and it is accordingly confirmed."

9.1. The said decision squarely applies to the facts of the case on hand.

10. Further, the Tribunal has relied upon the evidence of P.Ws.1 and 2 and R.W.1 and also Exs.P-1 to P-3 and ultimately held that the Insurance Company is liable to pay compensation. The reasonings recorded by the Tribunal are based on materials available on record. Specifically, the Tribunal while coming to be conclusion has discussed about the evidence of the Assistant

of the Insurance Company, (Parthiban) as R.W.1, who admitted during cross-examination that the policy was in force till 03.12.2003 and it covers third party claims and damages to the vehicle.

11. As far as the contentions raised by the Insurance Company with regard to the quantum of compensation arrived at by the Tribunal is concerned, it is necessary to consider the details of the employment and earnings and age of the deceased.

12. The admitted age of the deceased as 40 was taken by the Tribunal. Even though the claimants claimed that the deceased was earning a sum of Rs.4,000/- per month, in the absence of any documentary evidence, the Tribunal has chosen to fix the monthly income only at Rs.1,000/- and as the age of the deceased was 40 at the time of accident, the annual income was taken at Rs.12,000/- and the loss of income was arrived at Rs.1,92,000/-. Thus, the amount awarded under this head cannot be said to be on the higher side. The award of the sum of Rs.2,000/- and Rs.5,000/- have been paid towards funeral expenses and exgratia, which also cannot be said to be excessive.

13. This Court is of the opinion that the quantum of compensation, as fixed by the Tribunal, is just and reasonable and it can be said to be less and not more. Therefore, this Appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

14. The appellant / Insurance Company is directed to deposit the amount of compensation, as determined by the Claims Tribunal, along with interest at 9% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amount to the Savings Bank Accounts of the claimants / respondents 1 to 4 herein. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
   Chief Judicial Magistrate No.2
   (Incharge), Dharmapuri District at Krishnagiri.

2. The Section Officer, V.R.Section, Madras High Court,
   Chennai 104

+1 cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.46504

C.M.A.No.3155 of 2005
& CMP No.16289 of 2005

RJI(CO)
SSM(23/10/2019)