IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 04.04.2019	Date of Pronouncing Judgment 07.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1953 of 2012
and M.P.No.1 of 2012

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
No.95, Big Street, 1st Floor,
Tiruvannamalai Town & Taluk. ...Appellant/2nd Respondent

Vs.

1.Raman
2.Ravi
3.Thulasi
4.Shankar ...Respondents/Petitioners 1 & 2/ Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.220 of 2010 on 08.11.2011 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate) of Tiruvannamalai District.

For Appellant : Mr.J.Chandran

For Respondents 1, 2 : Mr.B.Jawahar

For Respondents 3, 4 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Divisional Manager, United India Insurance Company Limited challenging the Judgment and Decree passed in M.C.O.P.No.220 of 2010 on 08.11.2011 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate) of Tiruvannamalai District. They have filed the present appeal questioning their liability to pay compensation to the first and second respondents herein.

2.The learned counsel appearing for the appellant / Insurance Company contended that the deceased travelled in the mudguard of the tractor and as per the Insurance Policy, they are not liable to pay compensation to the claimants. He relied upon the Judgment of this Court in the case of Sanjeev

Kunar Samrat -vs- National Insurance Company Limited and others reported in 2013(1) TNMAC 15 (SC). He also relied upon the decision in the case of Iffco - Tokio General Insurance Company Limited -vs- Sulochana and others reported in 2010 ACJ 1522 stating that what was covered under the policy is only intended for the driver and not for any other employees, since there is only one seating capacity. In case of any person accompanying the driver in the tractor, wherein, the seating capacity is only one, the same amounts to violation of Section 173 of the Motor Vehicles Act, 1988 and Rule 21(10) of Central Motor Vehicle Rules read with Section 177 of Motor Vehicle Act. Therefore, he would contend that the driver alone shall drive the tractor and he shall not allow any other person to travel on the tractor and if any other person is carried on the tractor, the same is prohibited under Rule 28 of the Central Motor Vehicle Rules.

3.Per contra, the learned counsel appearing for the respondents 1 and 2 / claimants would contend that the deceased travelled as a labour under the owner of the tractor and in such capacity, she worked in tipper attached to tractor.

4.The Core issue that it to be decided in this Civil Miscellaneous Appeal is that whether as per the terms of policy the Insurance Company is liable to pay the compensation or it is to be exonerated from any liability. Both the counsels has stated supra.

5.It is seen from the award of the Tribunal that a similar point has been taken and urged before the Tribunal and the Tribunal after observing the facts that the R.W.2 staff from the Insurance Company has admitted in the cross examination that as per the terms of Ex.R2 policy. The Tractor with Registration No. TN 25 H 1756 is a comprehensive policy and on the date of the accident the policy was in force and as per the terms of Ex.R2 policy in the event of an accident the limited liability in respect of the person is to the accident of Rs.7,50,000/- and based upon the oral and documentary evidence, R.W.1 and Ex.R2 the Tribunal appears to have taken a view that the terms and conditions of the policy being comprehensive policy and the deceased travelled in the tipper as an Employee of the vehicle and as such in view of the terms of the policy they are entitled for policy coverage. In view of the admission of R.W.1 in the witness box and on re-appreciation of the above said oral evidence of R.W.1 coupled with Ex.R2 policy the finding rendered by the Tribunal is well considered and well narrated does not warrant interference by this Court and hence, the contention of the learned counsel for the Insurance Company has stated supra is negative on the above discussed factual position. Consequently, both owner of the vehicle an the Insurance Company are jointly and severally liable to pay the compensation.

6.In the result,

(i) The Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 08.11.2011 passed by the learned Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai District in M.C.O.P.No.220 of 2010, is confirmed.

(ii) If the award amount with accrued interest has not been deposited, the appellant / Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.220 of 2010 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Tiruvannamalai District, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, respondents 1 and 2 herein are permitted to withdraw the award amount along with interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, if any.

(iv) Consequently, the connected Miscellaneous Petition is closed.

(v) There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

rna

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Tiruvannamalai.

Copy To
The Section Officer,
VR Section, High Court,
Madras -104

+1cc to Mr.B.Jawahar, Advocate SR.No.68352

C.M.A.No.1953 of 2012
and M.P.No.1 of 2012

KK(CO)
GMY(02/03/2020)