IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 13.09.2019	Judgment Pronounced on 23.09.2019

CORAM:

THE HON'BLE MRS. JUSTICE S. RAMATHILAGAM

Civil Miscellaneous Appeal No.2204 of 2015

and

M.P.No.1 of 2015

V. Chinnasamy .. Appellant/Ist Respondent

..vs..

1. P.Duraisamy
2. Minor D.Priyanga
3. Minor D.Iniyavan

(The Minors are represented by their Next Friend and Guardian Father P.Duraisamy)...Respondents 1 to3/ Petitioners

4. The Branch Manager
M/s.United India Insurance Company Ltd.,
1170, Mettur Road - II Floor
Muthaiah Complex
Erode. ...4th Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the order and award dated 21.11.2013 made in MCOP No.184 of 2009 on the file of the Motor Accident Claims Tribunal at Erode, Special District Court, Erode District.

For Appellant : Mr. M.Karthick for M/s.I.C.Vasudevan

For Respondent-4 : M/s.I.Malar

J U D G M E N T

Appeal has been preferred by the owner of the vehicle, aggrieved against the judgment and award made by the Tribunal in MCOP No.184 of 2009 as against law and all probabilities of the case and the observation of the Tribunal that as if the deceased was gratuitous passenger and the liability fixed in that aspect is erroneous and unsustainable and that has to be set aside; The observation of the Tribunal in fixing the liability on the appellant as if there was no insurance coverage for the workmen or the driver of the tractor or trailer, is not proper and hence, in that aspect also the order of the Tribunal has to be set aside; Further, it is contended that even in the case of gratuitous passenger, the insurance company is liable to pay compensation to the claimants and then the Insurance Company can recover the same from the appellant; Further, the sum awarded by the Tribunal is also highly excessive and the Tribunal ought to have considered the contributory negligence on the part of the deceased, while awarding the compensation. The sum awarded by the Tribunal as future prospects and also by applying the multiplier of 15, without applying the principle laid down in Sarla Verma Case are all liable to be set aside.

2. The brief facts leading to the claim application are as follows:-

The claimants are the husband, daughter and son of one D.Mohanambal, who is the deceased in the accident. The said deceased Mohanambal was travelling in the tractor bearing Registration No.TNG-8098, on 04.02.2006, after completion of her sugarcane cutting work and the first respondent has driven the said tractor in a rash and negligent manner, by suddenly changed the gear, and due to the sudden change of gear, the deceased Mohanambal fell down and the rear wheel of the tractor ran over her and she met with her death. A criminal case was also registered against the driver by Kodumudi Police. The claimants claimed a sum of Rs.8,00,000/- as compensation for loss of income, loss of love and affection and care of mother since the claimants 2 and 3 are minors, who have lost their mother at the prime age.

3. The first respondent in the claim application do not admit the mode of accident as stated by the claimants. The first respondent also contended that the accident happened only due to the carelessness of the deceased Mohanambal, who fell down from the tractor and sustained injuries and there is no fault on the part of the first respondent. Further, the driver of the first respondent was also possessing a valid driving licence at the time of accident and the second respondent is also the insurer of the said vehicle and the first respondent disowned the liability to pay compensation.

4. On the other hand, the second respondent Insurance Company, in the counter statement, denied the liability by stating that the deceased was a gratuitous passenger in the tractor without the permission of the owner and the policy issued by this respondent does not cover the passengers in the tractor. Apart from denying the mode of accident and the negligent driving on the part of the driver, the sum claimed by the claimants are also denied as excessive one and without any proof. The Tribunal, after analysing the evidence and documents placed before the same, has given a finding regarding negligent

aspect that the accident occurred only due to the rash and negligent driving of the driver of the tractor owned by the first respondent. While determining compensation, the Tribunal has discussed the fact of the deceased travelled in the said tractor and has given a finding that the first respondent alone is liable to pay compensation to the claimants and the second respondent Insurance Company was not made liable to pay any compensation. Aggrieved against the said liability, the first respondent, owner of the vehicle has preferred this appeal.

5. Heard both sides and perused the materials available on record.

6. On hearing both sides and on perusal of the records, it is observed that at the time of accident, the deceased Mohanambal was travelling in the tractor. The claimants contended that the accident took place only due to the rash and negligent driving of the driver of the first respondent and hence, the Criminal Case was also registered against the driver of the tractor and the said vehicle is also insured with the second respondent Insurance Company, hence, the respondents are liable to pay compensation. The first respondent denied the liability by stating that he had driven the said vehicle in a careful manner and only the deceased, who is careless, was fell down from the tractor and sustained injuries and further, the tractor was also insured with the second respondent and the second respondent is also bound to indemnify the first respondent.

7. From the available records and also from the evidences placed before the Tribunal, it is observed that at the time of accident, sugarcanes were loaded in the trailer attached with the tractor bearing Registration No.TNG-8098 to carry the same to the sugarcane factory at Pugalur and the deceased in this case Mohanambal and one Pushparani were sitting in the tractor and they travelled along with the first respondent and the said tractor was proceeding to Kodumudi and when the first respondent suddenly changed the gear and due to sudden jerk, both the deceased viz., Mohanambal and Pushparani fell down on the road and the wheels of the tractor ran over on both the women and they died on the spot. The criminal case was also registered against the first respondent and he was also charge sheeted, for which, Ex.P6 was marked before the Tribunal. The driver of the said tractor/first respondent was also convicted by the learned Magistrate's Court, which were also proved by Ex.P8. On the other hand, on the side of the Insurance Company, RW.1 was examined, who had spoken about the liability aspect by stating that there is no coverage in the policy in respect of the passengers travelling in the offending tractor. Ex.R1 is the policy, that is filed before the Tribunal and while verifying

the said policy, it is observed that a sum of Rs.785/- has been paid towards third party basic and a sum of Rs.375/- was also paid as additional premium for trailer and another sum of Rs.79/- was also paid for loading on third party premium and thereby, a sum of Rs.1,239/- was paid by them as total liability premium. So on observing the said premium, it is observed that no extra premium was paid neither for the occupants nor for the driver or for any other workmen of the tractor and when it is observed that the deceased was travelled in the tractor only as an unauthorised passenger, the Tribunal, by observing that aspect and by verifying the policy Ex.R1, came to the conclusion that there is no coverage of the policy for such unauthorized passenger and therefore, the liability against the Insurance Company is not considered and only the first respondent was made liable to pay compensation.

8. On perusal of the records, especially First Information Report, it is observed that the complaint was preferred by one Palanisamy, who has stated that he along with other persons including the deceased one Pushparani, W/o.Ramasamy and the deceased one Mohanambal, W/o.Duraisamy, cut the sugarcanes for sending them to sugar factory at Pugalur and the sugarcanes were loaded in the tractor and the first respondent Chinnasamy was driving the said tractor. When the tractor was proceeding from Thamaraipalayam to Kodumudi, the said driver driven the vehicle in a rash and negligent manner and while suddenly changing the gear, the said tractor jerked and due to which, the said Pushparani and Mohanambal, who were sitting in the tractor near the driver, fell down from the tractor and the wheels ran over on them and both succumbed to injuries on the place of occurrence itself."

9. Aggrieved against the liability fixed on the first respondent/appellant herein, he relied upon the decision of this Court reported MANU/TN/3792/2017 : (2018) ILLJ 650 Mad in CMA No.559 of 2015 (The Divisional Manager, United India Insurance Co. Ltd., ..vs.. Kalaivani and others). The finding in the said case is as follows:-

> "10. .... When the deceased had died in the course of employment, his dependants are entitled for compensation. The Division Bench of Karnataka High Court in the judgment reported in 2011 ACJ 2054 [Mounesh Vs. Thimmanna and another] held that the Tractor with a Trailer used for transportation of agricultural produce and other goods would be very much a goods vehicle. Besides, such a Tractor and Trailer would be a goods carriage within the meaning of Section 2(14) of the Motor Vehicles Act, in which event the risk of

workmen/loaders of the Tractor-Trailer is necessarily to be covered under Section 147 as an Act Policy without collecting any additional premium. In that view of the matter, the Karnataka High Court held that the insurer would be liable to pay compensation in terms of the Workmen's Compensation Act. In the judgment reported in 2013 (2) TN MAC 620, this Court held that though the deceased was working as a cleaner in the Tractor at the time of the accident and no premium was paid to the cleaner under the policy of the above vehicle, when the Tractor was used for unloading the sand in the land belonging to the owner of the vehicle, it has to be construed that loading and unloading in the agricultural field by the Tractor has to be part of the agricultural work. Therefore, this Court held that the Insurance Company is liable to pay compensation, though no separate premium was paid in respect of the cleaner under the Policy.

11. The ratio laid down in these two judgments squarely applies to the facts and circumstances of the present case. In the case on hand, the deceased was loading sugarcane reeds in the Tractor-Trailer and he fell down from the Trailer and had died due to the head injuries sustained by him.

12. It is pertinent to note that the entire Insurance Policy was not marked by either of the parties. Only the Certificate of Insurance was marked by the claimants as Ex.P2. That apart, as per the judgment referred above, though no separate premium has been paid in respect of the loader/workman in the Tractor-Trailer, when the Tractor-Trailer was used for transportation of the agricultural produce, the appellant/Insurance Company is liable to pay the compensation. The appellant could have marked the entire Insurance Policy in respect of the Tractor and substantiated their case. However, they chose not to mark the Insurance Policy before the Additional Commissioner. Therefore, I am of the considered view that the Additional Commissioner has rightly held that the

appellant is liable to pay the compensation."

10. But in the said case, the deceased was travelling in the trailer for the purpose of loading sugarcane reeds. In the said case, the said Ramalingam died in the course of his employment and he was engaged by the respondent as an agricultural labourer. In the said appeal, the Insurance Company, who was the appellant, contended that the insurance policy purported to be issued in respect of the tractor bearing Registration No.TN-25-Y-4167 does not cover any workman and the owner has not paid any premium towards covering injury or death of any other person other than the driver of the said tractor and another employee for the maintenance of the tractor and the seating capacity of the tractor is only one as per the Registration Certificate and there is no scope or provision for any other person to travel in the tractor; The trailer was not insured with the Insurance Company and there is no provision for a loadman in a tractor to claim compensation. The alleged accident was occurred when the tractor was not in use and the tractor was not in motion, and hence, as per the policy conditions, liability cannot be cast upon the Insurance Company to indemnify the owner of the tractor for the death of the deceased Ramalingam.

11. The appellant relied on the said observation made in the said case, by quoting para-10 of the said judgment that "when the deceased had died in the course of employment, his dependents are entitled to compensation. The tractor with a trailer used for transportation of agricultural produce and other goods are very much a goods carriage vehicle. Therefore, this Court held that Insurance Company is liable to pay compensation, though no separate premium was paid in respect of the cleaner under policy."

12. But, in this case, the deceased were travelling in the tractor. Whereas, the respondent vehemently contended that in the decision reported in 2019 ACJ 840 (C.Pinniammal ..vs.. Jakkammal and others), this Hon'ble Court held that travelling in the mudguard of the tractor is violation of policy conditions and therefore, the Tribunal rightly held that the tractor cannot be termed as a goods vehicle and it is only meant for agricultural works and for the persons, who travelled on the tractor, no compensation can be granted and the said finding is according to law.

13. In the said case relied by the respondent, the deceased was travelling in the mudguard of the tractor and it is observed that the tractor was used only for agricultural purpose and in the said case also there were four persons travelled along with the driver and if the trailer is attached, there is possibility that those persons can travel as coolies for the purpose of loading and unloading the agricultural products and there is no necessity for four persons to travel in the tractor, even for the purpose of helping the driver. Hence, in the said case, the violation of policy condition was observed and the observation of the Tribunal is that the tractor cannot be termed as goods vehicle and the persons travelling in the tractor cannot claim any compensation and the appeal preferred by the owner of the tractor was dismissed and the finding of the Tribunal is confirmed.

14. The other decision relied by the respondent Insurance Company is the decision of this Court in "United India Insurance Company Limited, Mayiladuthurai Town ..vs.. Chinnapillai and another (CMA No.329 of 2008)", wherein it is observed that the injured was not sit within the purview of seating capacity. The relevant portion of the said judgment is as follows:-

> "11. In the instant case, the injured was admittedly sitting on the tow bar and definitely, he will not be covered under the policy even though the goods loaded in the tractor belonged to him. The owner of the goods is permitted to travel in the goods vehicle, but he cannot be permitted to travel in the load area or tow bar of the goods vehicle. He can travel only in the area earmarked for sitting. In fact, in the tractor-trailer, there is seating capacity except the driver of the tractor."

15. Hence, in this case on hand also, the clear evidence placed before the Tribunal that the deceased Mohanambal was permitted to travel in the tractor near the driver, which is very much proved and hence, the finding of the Tribunal that the said Mohanambal travelled as an unauthorised gratuitous passenger and the finding of the Tribunal on that aspect and the liability on the first respondent is very much reasonable. Therefore, the finding of the Tribunal that the first respondent/appellant herein alone is liable to pay compensation to the claimants and the Insurance Company is not liable to pay

any compensation to the claimants is very much based on the oral evidence of RW.1. as well as based on the documentary evidence - Ex.R1 policy. Hence, the finding of the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (AD I)

/true copy/
Sub Asst. Registrar

Mra
To
1. The Special District Judge,
   Motor Accident Claims Tribunal
   Erode District.
2. The Section Officer, V.R.Section,
   Madras High Court, Chennai 104.

+1 cc to Mr.I.C.Vasudevan Advocate sr81429
+1 cc to M/s.T.Ravichandran Advocate sr81677

C.M.A.No.2204 of 2015
and
M.P.No.1 of 2015

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