

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2319 of 2012
and
M.P.No.1 of 2012

Iffco Tokio General Insurance Company Limited,
28, 1st & 2nd Floor,
North Usman Road, T.Nagar,
Chennai - 600 017. Appellant/2nd Respondent

Vs.

1.Santhi

2.Vaithiyalingam ...Respondents 1 & 2/Petitioners

3.S.Periyasamy3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.12.2011 passed in M.C.O.P.No.60 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan
For RR 1 & 2 : Mr.R.Selvakumar
For R3 : No appearance

J U D G M E N T

The appellant / Iffco Tokio General Insurance Company Limited is the second respondent in M.C.O.P.No.60 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri. Respondents 1 and 2 filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the death of their son Dhamodharan in a road accident on 05.10.2008.

2. The case of the claimants is that on 05.10.2008, while the deceased Dhamodharan was travelling in a tractor bearing Registration No. TN 29 AC 5781 on Poppidi - Palacode main road, the driver of the tractor applied sudden brakes as a result of which the deceased fell down and died on the spot. According to

the claimants, the rash and negligent driving of the driver of the tractor belonging to the third respondent was the cause of the accident and that since the said tractor was insured with the present appellant / Iffco Tokio General Insurance Company Limited the owner and the insurer are jointly and severally liable to pay compensation.

3. The second respondent / owner of the tractor remained absent before the Tribunal and therefore he was set ex-parte. The appellant / Iffco Tokio General Insurance Company Limited, contested the claim petition. The learned Principal District Judge / Motor Accident Claims Tribunal, Dharmapuri, after analysing the evidence on record, awarded a compensation of Rs.1,70,000/- together with interest at the rate of 7.5% per annum to the claimants and directed the owner and the insurer of the tractor to pay compensation jointly and severally. Aggrieved over by the orders passed by the Tribunal, the appellant / Iffco Tokio General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant / Iffco Tokio General Insurance Company Limited, contended that the deceased was travelling in a tractor in which there is no seating capacity for passengers, the Insurance Company cannot be held liable to pay compensation to the claimants.

5. Per contra, Mr.R.Selvakumar, learned counsel appearing for the respondents 1 and 2 / claimants contended that since the deceased was aged 9 years and was a minor boy, the driver of the tractor should have prevented the boy from travelling in the tractor and therefore the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the vehicle.

6. In United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity, the Insurance Company would not be held liable to pay compensation."

7. In a tractor there is space for passengers and in the instant case, the deceased was admittedly sitting in the tractor and definitely he will not be covered under the policy, even though, he was a minor boy aged 9 years. The owner and the driver had permitted the minor boy to sit in the tractor and had violated the policy conditions and therefore the Insurance Company cannot be fastened with liability.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The order of the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle is set aside.

(iii) The appellant / Iffco Tokio General Insurance Company Limited is exonerated from being paying the compensation amount.

(iv) The quantum of compensation passed by the Tribunal is upheld.

(v) The third respondent / owner of the tractor is directed to deposit the compensation amount i.e., Rs.1,70,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.60 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri, (less the amount already deposited by them) within a period of four weeks from the date of receipt of a copy of this order.

(vi) The appellant / Iffco Tokio General Insurance Company Limited is at liberty to withdraw the amount, if already deposited by them.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge,
The Principal District Court
Motor Accidents Claims Tribunal,
Dharmapuri.

2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.N.Vijayaraghavan, Advocate sr 93176.

+1 CC to Mr.R.Selvakumar, Advocate sr 91849.

C.M.A.No.2319 of 2012

BR(CO)
SP(23/07/2020)