

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.805 and 806 of 2015
and
M.P.Nos.1,1 of 2015

The Branch Manager,
United India Insurance Company Limited,
Katchery Road, Kallakurichi.

.. Appellant
(in both C.M.As)

Vs.

1.Susairaj

2.Minor. Guloriyamary

3.M.Selvaraj

.. Respondents
(in C.M.A.No.805 of 2015)

(Minor second respondent, represented by
her father/next friend, first respondent herein)

1.Arokiyasamy

2.Minor. Sibeeraj

3.M.Selvaraj

.. Respondents
(in C.M.A.No.806 of 2015)

(Minor second respondent, represented by
his father/next friend, first respondent herein)

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
judgment and decree dated 29.07.2013 made in M.C.O.P.Nos.321 and
322 of 2011 on the file of the Motor Accident Claims Tribunal,
III Additional District Court, Kallakurichi.

In both C.M.As:

For Appellant : Mr.S.Arunkumar

For R1 : Mr.S.Sarathchandran
for Mr.K.M.Vijayan

For R3 : Mr.K.P.Jotheeswaran
for Mr.T.P.Manoharan

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 29.07.2013 made in M.C.O.P.Nos.321 and 322 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2.Both the appeals are arising out of the same award and hence they are disposed of by this common judgment. The parties are referred to as per their rank in claim petition, for the sake of convenience.

3.The appellant in both the appeals is the second respondent in M.C.O.P.Nos.321 and 322 of 2011 (M.C.O.P.Nos.230 and 231 of 2009 transferred from the file of Motor Accident Claims Tribunal, Sub Court, Kallakurichi) on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi. The claimants filed the above said claim petitions claiming a sum of Rs.5,00,000/- each as compensation for the death of S.Sagaiyaselvarani and Lilly Christy respectively in the accident that took place on 19.02.2009.

4.According to the claimants, on 19.02.2009 at 04.00 P.M., while the deceased in both the appeals were travelling in a Tractor bearing Registration No.TN 32 U 8390 belonging to the first respondent and due to jolting of the Tractor, both of them fell down and the trailer bearing Registration No. TN 32 Z 1299 ran over them. In the said accident, both of them sustained grievous injuries and died on the way to hospital. Therefore the claimants claimed compensation for the death of S.Sagaiyaselvarani and Lilly Christy respectively against the respondents 1 and 2 being the owner and insurer of the Tractor.

5.The first respondent-owner of the Tractor Trailer filed counter statement and denied that the accident occurred due to rash and negligent driving by the driver of the Tractor. Due to the negligence of the deceased, they fell down from the Tractor and suffered fatal injuries. The deceased in both the appeals are contract labourers to cut and load sugarcane. The owner of the land alone is liable to pay compensation and he is a necessary party.

6.The second respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to the second respondent/Insurance Company, the accident did not occur due to rash and negligent driving by the driver of the Tractor belonging to the first respondent. The accident occurred only due to negligence on the part of the deceased in both the claim petitions. As per the conditions of the Insurance Policy, the owner of the Tractor cannot carry any

passenger in the vehicle. The owner of the Tractor violated the policy condition and hence, he alone is liable to pay the compensation to the claimants in both the appeals. The second respondent/Insurance Company is not liable to pay any compensation to the claimants in both the appeals. In any event, the quantum of compensation claimed by the claimants in both the appeals are excessive and prayed for dismissal of both the claim petitions.

7.Before the Tribunal, the first claimant in M.C.O.P.No.321 of 2013 and the first claimant in M.C.O.P.No.322 of 2013 examined themselves as P.W.1 and P.W.2 and marked six documents as Exs.P1 to P6. The first respondent in both the claim petitions/owner of the Tractor examined himself as R.W.1 and no documents were filed on behalf of the respondents.

8.The Tribunal considering the pleadings, oral and documentary evidence, especially evidences of P.W.1 and 2, Exs.P1/copy of F.I.R., P4/Motor Vehicle Inspector's report, held that the accident has occurred due to rash and negligent driving by the driver of the Tractor belonging to the first respondent, deceased in both the appeals were unauthorized passengers and directed the second respondent, being the insurer of the Tractor to pay at the first instance a sum of Rs.4,62,000/- and Rs.4,38,000/- as compensation to the claimants in M.C.O.P.Nos.321 and 322 of 2011 respectively and recover the same from first respondent.

9.Challenging the said common award dated 29.07.2013 made in M.C.O.P.Nos.321 and 322 of 2011, fixing liability on the part of the Insurance Company, the second respondent/Insurance Company has come out with the present appeals.

10.The learned counsel appearing for the second respondent/Insurance Company in both the appeals contended that the Tribunal having held that the deceased in both the appeals were unauthorized passengers, erred in ordering pay and recovery. As per permit and policy condition, only the driver of the Tractor can travel in the Tractor. The deceased in both the appeals have traveled in the Tractor as unauthorized passengers. As per the judgment of the Hon'ble Apex Court and this Court, the Insurance Company is not liable to pay any compensation for unauthorized passengers and no award can be passed for pay and recovery and prayed for setting aside the common award passed by the Tribunal.

11.Per contra, the learned counsel appearing for the claimants 1 and 2 and first respondent/owner of the Tractor in both the petitions separately contended that the deceased in both the appeals were agricultural coolie and they are

authorized to cut sugar cane and load the sugarcane in the Tractor to be delivered in the Kallakurichi Co-operative Sugar Mills. The first respondent/owner of the Tractor examined himself as R.W.1 who had deposed that deceased in both the petitions were agricultural coolie and they travelled as contract workers of Kallakurichi Co-operative Sugar Mills to cut and load the sugar cane. The second respondent/Insurance Company in both the petitions has not let in any contra evidence to disprove the contention of the claimants and prayed for dismissal of both the appeals.

12. Heard the learned counsel appearing for the second respondent/Insurance Company as well as claimants and first respondent/owner of the Tractor and perused the entire materials on record.

13. From the materials available on record it is seen that the respondents 1 and 2/claimants did not state in the claim petitions in what capacity the deceased in both the petitions travelled in the Tractor. On the other hand, the second respondent/Insurance Company in both the petitions had taken a stand in the counter statement that deceased in both the petitions have travelled in the Tractor as unauthorized passengers and that second respondent/Insurance Company is not liable to pay any compensation to the claimants. The first respondent/owner of the Tractor as R.W.1 has deposed that deceased in both the appeals were contract workers of Kallakurichi Co-operative Sugar Mills engaged to cut and load sugar cane. The Tribunal did not consider the contention of the second respondent/Insurance Company that deceased in both the appeals have travelled in the Tractor as unauthorized passengers. The Tribunal did not consider the evidence of R.W.1/owner of the Tractor, who had deposed that deceased in both the appeals were contract workers to cut and load sugar cane in the Tractor. Without any discussion, the Tribunal has held that deceased in both the appeals were unauthorized passengers. The Tribunal has not given any reason for such conclusion.

14. In view of the above, the award of the Tribunal is set aside and both the matters are remitted back to the Tribunal to consider and decide the issue whether the deceased in both the appeals have travelled as unauthorized passengers or not. It is open to the parties to let in any evidence if they so desire or advised.

15. In the result, both the Civil Miscellaneous Appeals are disposed of and both the matters are remitted back to the III Additional District Court, Kallakurichi. M.C.O.Ps are of the year 2011 and hence the III Additional District Judge, Motor

Accident Claims Tribunal, Kallakurichi, is directed to dispose of the claim petitions as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this common judgment. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

krk

To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Kallakurichi.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 102566

+1cc to Mr.K.M.Vijay, Advocate, S.R.No. 102293

C.M.A.Nos.805 and 806 of 2015

VSN II (CO)
GN(30/09/2020)

सत्यमेव जयते

WEB COPY