IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.402 of 2013

The United India Insurance Company
Limited, Branch Office,
Nehuruji Road, Villupuram,
... Appellant/2nd Respondent

..Vs..

1.Kesammal
2.Veriyan ..Respondents 1 & 2 /Petitioners
3.Kandan
...3rd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.07.2012 in M.C.O.P.No.89 of 2010 on the file of Principal District Court, Motor Accidents Claims Tribunal, Villupuram.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.K.Varadha Kamaraj for R1 & R2
R3- No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 09.07.2012 passed by the Motor Accident Claims Tribunal cum Principal District Court, Villupuram in M.C.O.P.No.89 of 2010.

2. On 07.04.2010, at about 01.00 p.m., when Elumalai (deceased) aged about 20 years was travelling as a loadman in a Tractor, bearing Registration No.TN 32 R 7349, which was attached with tipper with load of sand, due to the sudden jerk between the movements of wheels, he fell down from the tractor and was run over by the wheels of the tipper, and died on the spot. Since the said accident was due to the negligent driving of the driver of the Tractor, owned by the third respondent herein and insured with the appellant herein, the parents of the deceased filed a claim petition against both the owner as well as its insurer, claiming a sum of Rs.8,33,000/- as compensation.

3. The third respondent herein, viz., owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The present appellant /Insurance Company, Chennai contested the claim petition by filing a counter statement, denying their liability by contending that the accident occurred solely due to the negligent act of the driver of the Tractor, and further, there was violation of policy condition, since the owner permitted the deceased to travel in the Tractor as an unauthorized passenger and hence, they were not liable to pay the Compensation. Further, they also disputed the age, occupation, income of the injured and prayed for dismissal of the claim petition.

5. Before the Tribunal, PW1(mother of the deceased) and PW2 were examined and Ex.P1 to Ex.P6 were marked. Ex.P1 - FIR, Ex.P2 - M.V.Inspector's Report, Ex.P3-Post Mortem Certificate, Ex.P4- Certificate of Registration, Ex.P5- Insurance Policy and Ex.P6- Driving licence of Suresh. On behalf of the Insurance Company, one witness was examined as R.W.1, but no document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was due to the rash and negligent driving of the driver of the Tractor, belonging to the third respondent/owner, and the appellant, being the insurer of the offending vehicle, they were liable to pay the compensation. The Tribunal further held that since there is violation of Insurance Policy, the appellant is granted liberty to recover the compensation from the owner of the vehicle by way of separate proceedings, By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.3,49,000/- with interest at 6% p.a. from the date of filing the claim petition and till the date of realization. The breakup details of the compensation are as follows:-

S.No	Head	Amount granted
1.	Loss of Dependency	Rs.3,24,000/-
2.	Funeral Expenses	Rs.5,000/-
3.	Loss of Love and affection	Rs.20,000/-
Total		Rs.3,49,000/-

7. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the appellant, the appellant-Insurance Company has come out with the present appeal.

8. The learned counsel appearing for the appellant/ Insurance Company disputed the liability fastened on the appellant/Insurance Company by contending that the deceased travelled in the said tractor as an unauthorised passenger, and as such, there was a clear violation of policy condition, and therefore, he is not covered under the policy of Insurance. Hence, the claimants cannot seek any compensation from the Insurance Company.

9. The learned counsel appearing for the appellant/ Insurance Company further placed reliance on the decision of the Hon'ble Supreme Court in the case of Bharati AXA General Insurance Co. Ltd., vs. Aandi and others reported in 2018(2) TN MAC 731 (DB) in support of his contention that the Insurance Company is not liable to pay compensation to the gratuitous Passenger and he referred to relevant paragraphs from the said judgements, which are extracted as hereunder:

> ""46. The next decision relied upon by Mr.N.Vijayaraghavan in support of his contention that this Court has ample power to direct the Insurance Company to pay the Compensation with liberty to recover the same even in respect of a Gratuitous Passenger in a Goods Vehicle is National Insurance Company Limited Vs. Saju P.Paul, 2013 (1) TN MAC 25 (SC). There again the Hon'ble Supreme Court held that the High Court was not right in directing the Insurance Company to pay the Compensation. In fact, the Hon'ble Supreme Court while dealing with the liability of the Insurance Company to pay the Compensation for a spare Driver who was travelling in Goods vehicle observed as follows:
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> "17. The High Court misconstrued the Proviso following sub-section (1) of Section 147 of the 1988 Act. What is contemplated by the Proviso to Section 147(1), is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an Employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The Claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in the cabin would

not make his case different from any other Grtuitous Passenger.

18.The impugned Judgment is founded on a misconstruction of Section 147. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay the Compensation to the Claimant as directed in the award by the Tribunal."

47.However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the Compensation with liberty to recover. Therefore, in our considered opinion the Judgment in Nation Insurance Company Limted Vs. Saju P.Paul, 2013 (1) TN MAC 25 (SC) : 2013 (2) SCC 41, cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the person, who are unauthorized passengers in a Goods vehicle.""

10. The learned counsel appearing for the appellant/Insurance Company further contended that even if the Insurance Policy is covered for the load man, in the present case, since the accident occurred due to the reason that the deceased was travelling in the hook, which acts as a joining between the tractor and trailer, negligence lies purely on the part of the deceased and the owner of the vehicle, and therefore, the liability should be fastened only on the owner of the tractor and not on the appellant/Insurance Company. Therefore, the learned counsel submitted that the Court should interfere with the findings rendered by the Tribunal with regard to the liability aspect and prays for setting aside the same.

11. Per contra, the learned counsel appearing for the respondents 1 and 2, claimants by placing reliance on the decision of the Hon'ble Supreme Court, in the case of Divisional Manager, United India Insurance Co. Ltd., vs. Kalaivani and others reported in 2019 ACJ 306 would submit that on the date of the accident, the deceased was travelling as a load man in the tractor. He further contended that when the deceased died in the course of employment, his dependents are entitled for compensation and the Insurance Company cannot make a submission that they are not liable to pay the compensation to the dependents of the deceased. In this regard, he referred to

Paragraph no. 9 of the above said Judgment, which is extracted hereunder:

> "9. Countering the submissions made by the learned counsel for the appellant insurance company, Mr.R.Thiagarajan, learned counsel appearing for the respondent Nos. 1 to 4-claimants, submitted that this Court had repeatedly held that an agricultural coolie, operating with the agricultural produce in the trailer, is entitled to claim compensation from the insurance company. Further, the learned counsel submitted that even if no premium is paid to cover a cleaner in the policy, for loading and unloading in the agricultural field of the tractor is a part of agricultural work, the cleaner is also entitled for compensation. That apart, the learned counsel also submitted that the present appeal has been filed by the appellant insurance company without depositing the entire award amount, i.e., the insurance company had deposited only the award amount and not the accrued interest, which is a mandatory requirement under Section 30 (1) (a) of the Workmen's Compensation Act, 1923, therefore, the appeal is liable to be rejected on that ground also......"

12. Heard the learned counsel for the appellant/Insurance Company and the leraned counsel for the claimants/respondents 1 and 2 and gone through the records placed before this Court.

13. In view of the above decision, it is very clear that even if no premium is paid to cover a load man, the dependents of the deceased are entitled to get compensation from the Insurance Company. Further, it is to be noted that, in the present case, the Tribunal directed the Insurance Company to pay the compensation to the claimants and permitted them to recover the same from the owner of the said tractor by way of separate proceedings. Since the present appeal has been preferred by the appellant/Insurance Company and no appeal has been preferred by the owner of the vehicle, third respondent, this Court is not inclined to interfere with the order passed by the Tribunal and the findings of the Tribunal with regard to the liability aspect is hereby confirmed.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited, if any, together with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. The

interest awarded by the Tribunal at the rate of 6% per annum is enhanced to 7.5% per annum from the date of Petition till the date of deposit. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through NEFT or RTGS within a period of one week thereon. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vkr
To

The Motor Accidents Claims Tribunal,
The Principal District Court,
Villupuram.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 33852.
+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 33721.

C.M.A.No.402 of 2013

MR(CO)
SP(19/09/2019)