

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1095 to 1097 of 2018
and C.M.P.Nos.9166 to 9168 of 2018

National Insurance Co., Ltd.,
No.74-A, Paramathi Road,
Namakkal - 2

... Appellant in all the appeals

Vs.

1. Murugesan
2. Gandhimathi
3. Minor Soundarya
4. Minor Karthikeyan
rep by 2nd Respondent

5. Murali ... Respondents in C.M.A.No.1095 of 2018

1. Ramasamy
2. Minor Manoj Kumar
rep. By 1st respondent

3. Murali ... Respondents in C.M.A.Nos.1096 and
1097 of 2018

Civil Miscellaneous Appeals are filed under Section 30 of Workmen Compensation Act 1923, against the orders passed by the Commissioner for Workmen Compensation at Coonur, Nilgiris District in W.C.Nos.751, 752 and 756 of 2015 dated 02.01.2017.

For Appellant : Mr.J.Chandran

For Respondents : Mr.R.Nalliappan

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

Since the issues involved in these appeals are interlinked, they are taken up together and a common Judgment is being passed.

2. The appellant / National Insurance Company, Namakkal has filed these appeals to set aside the order passed in W.C.Nos.751, 752 and 756 of 2015 dated 02.01.2017 by the Commissioner for Workmen Compensation at Coonur, Nilgiris

District and to dismiss the claim of the respondents.

3. The contentions of the appellant's counsel with regard to the present appeals are that one Kamali, sister of Murali / 5th respondent, who is the owner of the vehicle, which met with an accident had informed the police at Mohamoor Police and FIR was registered in Crime No. 347 of 2014 on 02.12.2014. He further contended that TATA ACE bearing registration no. TN 28 AM 2797 has been taken by the said Kamali to the native place to bring the house hold articles along with her brothers, Arunkumar, Ravikumar and Manojkumar and his daughter. While they were travelling in Namakkal to Trichy main road, near N.Pudupatti Tamarai Selvi Hotel, the said vehicle met with an accident due to the rash and negligent driving of the Transport Corporation bus bearing registration no. TN 45 N 3709, on account of which, Arunkumar and Ravikumar died; Manojkumar sustained injuries. In the said accident, a Pulsar Motor Cycle, owned by one Sivakumar bearing registration no. TN 28 AM 3407, also damaged and he also sustained injuries. The respondents 1 to 4 / claimants had filed claim petition in W.C.No.751 of 2015 and the respondents 1 and 2 had filed Claim Petitions in W.C.Nos.752 and 756 of 2015 seeking compensation stating that the deceased persons, viz., Arunkumar and Ravikumar employed as driver and cleaner respectively and the person, who is injured, viz., Manoj Kumar was a loadman employed under Murali, owner of the vehicle. A sum of Rs.8,85,480/- was awarded in W.C.No.751 of 2005 for the death of Ravikumar, who was working as cleaner. A sum of Rs.5,21,897/- was awarded in W.C.No.756 of 2015 for the injured, Minor. Manojkumar, who was working as loadman. A sum of Rs.8,95,840/- was awarded in W.C.No.752 of 2015 to Arunkumar, who was working as driver and all of them were working with Murali, owner of the vehicle and the vehicle was insured with the appellant. Against the awards passed by the Commissioner for Workmen Compensation at Coonur, Nilgiris District in W.C.Nos.751, 752 and 756 of 2015 dated 02.01.2017, the appellant has come up with these appeals.

4. This Court on 13.08.2018, while admitting the Civil Miscellaneous Appeals has raised the following substantial questions of Law:

- a) Whether any employer / employee relationship existed between the victim of the accident and the owner of the vehicle?
- b) Whether the insurance Company / appellant is liable under the policy of insurance to the petitioners before the Commission?
- c) Whether any claim is maintainable leaving the genuine offender the bus of Tamil Nadu State Corporation?

5. The claimants / respondents have filed claim petitions, viz., W.C.Nos.751, 752 and 756 of 2015, before the Commissioner of Labour, in which they have stated that Ravikumar was working

as a cleaner; Arunkumar was working as a driver; Manojkumar was working as a load man in the vehicle which met with an accident on 02.12.2014. On that day, around 9.30 a.m., while proceeding in Namakkal to Trichy Main Road, at N.Pudupatti near Hotel Thamaraiselvi hotel, in the opposite direction, the Transport Corporation bus bearing Registration No.TN 45N3709 driven by its driver in a rash and negligent manner, hit against the deceased persons' vehicle and due to the accident, Ravikumar and Arunkumar died on the spot and Manojkumar sustained grievous injuries. Postmortem was conducted at Government Hospital, Namakkal and a case was registered in Crime No.347 of 2014 for offences under Sections 279, 337, 338, 304(A) IPC on 02.12.2014. Further, in the claim petitions, they would contend that the said deceased Ravikumar was working as a cleaner and due to his death, the claimants therein are living a miserable life, because he is the only earning member and was earning a sum of Rs.10,000/- including batta. They are depending on his income only and thereby sought a compensation of Rs.10,00,000/-. In respect of the deceased Arunkumar, the claimants therein would submit that the deceased was aged 21 years and was receiving a salary of Rs.15,000/- including batta. He was working as a driver for the past two years prior to the accident and that he was the only earning member of the family and thereby sought a claim for Rs.12,00,000/-. With regard to the injured, Minor Manojkumar is concerned, the claimants therein, have stated that the injured was aged about 17 years only and was receiving a salary of Rs.10,000/- per month. Further, he was working as loadman for the past 6 months. He sustained head injury with Semi conscious right maxillary sphenoidal Ethrodial Hacmosiness, crush injury Rt knee (f), right fore head multiplescalp (f), contusion right eye ball with Ichimases with sub conjuchitval haemarrage and that he was taking treatment as inpatient for more than 15 days and has spent Rs.1,00,000/- towards medical and other expenses, thereby the claimants, therein sought a compensation for a sum of Rs.8,00,000/-.

6. The appellant herein / 2nd respondent has filed counters in W.C.Nos.751, 752 and 756 of 2015, in which they have denied the contention that the deceased, Ravikumar and Arunkumar were working as cleaner and driver respectively in the vehicle bearing Regn. No.TN 28 AM2797, which was insured with the appellant herein and met with road accident. Further, the counter would proceed to state that there was no employee-employer relationship between the deceased persons, injured person and Murali. There was no material to prove that the accident had occurred in and out of the course of employment with the said Murali. It was also contended in the counters that in the FIR, at the time of alleged accident, there were four persons, travelled in the said vehicle, however, the seating capacity of the vehicle is only two persons, including

the driver and the vehicle is only meant for carrying goods and not for the use of carrying passengers. Further, the said Murali, who is the owner of the vehicle is aware of the fact that carrying passengers in the goods vehicle is basically a crime, however, violated the same by carrying passengers morethan the permitted seating capacity and hence the appellant -Insurance company is not liable to compensate the respondents. Moreover, Manojkumar, is minor and school going child and that he cannot be a loadman in the said vehicle under the employment of the said Murali.

7. Supporting the pleas of the claimants, the claimants have examined P.W.1, Gandhimathi and Exs.P.1 to P.6 were marked in W.C.No.751 of 2015; P.W.1, Ramasamy was examined as P.W.1 and Exs.P.1 to P.7 were marked in W.C.No.752 of 2015; P.W.1, Ramasamy and P.W.2, Dr.Sivalingam were examined and Exs.P.1 to P.7 were marked and Ex.R1 to R3 were marked on the side of the respondents. In respect of the appellant / Insurance Company, one Rwl, Miss. Yazhini was examined on the side of the appellant / insurance company.

8. The learned counsel for the appellant submitted that the said Murali was the brother-in-law of the said Kamali, who had given a complaint before the police and they are not liable to pay the compensation because of the fact that the said Murali being the relative of the deceased and injured persons and hence, they cannot be employed as driver, cleaner and loadman and it was only fabricated to get compensation illegally and therefore, the appellant is not liable to pay the compensation.

9. The learned counsel for the appellant further contended that the learned Commissioner failed to appreciate and assess the evidence of Miss. Yalini, Rwl, who had deposed that as per Registration certificate, the seating capacity was only two (1+1), the vehicle goods carrier shall not be used to carry 5 persons and no evidence was produced to prove the employment as driver, cleaner, and the same is in violation of Section 123 of Motor Vehicles Act, wherein it is stated that 'No person driving (or) in charge of Motor Vehicle shall carry any person or permit any person to be carried on the running board (or) otherwise than within the body the vehicle'. Section 125 of Motor Vehicle Act states that 'No person driving Motor vehicle shall allow any person to stand or sit or to place anything in such a manner or portion as to hamper the driver in his control of the vehicle'.

10. Apart from the above, the learned counsel for the

appellant submits that as per Rule 236 of Tamilnadu Motor Vehicle Rule 1989, 'No persons shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation' ; Rule 238, 'Restricts persons on the top of the goods carriage'. Rule 243, 'Restricts persons and goods near driver seat'. Hence the deceased, Arunkumar, Ravikumar and injured Manoj kumar had violated the provisions of Motor Vehicles Act, Central Rules and State Rules, as per Section 3 of Workmen Compensation Act, thereby it is clear that the appellant is not liable and owner of the vehicle is liable to pay the compensation to the claimants.

11. It is also contended by the learned counsel for the appellant that the brothers and sisters travelled in a goods carriage for personal use, owned by another brother can maintain the application?. Also, the deceased and injured around totally 5 persons travelled in a goods carriage against the seating capacity of two, entitled to get compensation from the appellant?. When the persons, who died and injured in the accident, are only relative persons and not 3rd parties, the appellant is not liable to pay any amount as compensation. Further, the injured person, who has claimed through his father is a minor, since the employment of minor person is prohibited under Law, he seeks to set aside the orders passed by the court below.

12. The learned counsel for the appellant points out the decision of Hon'ble Supreme Court reported in 2009(13) SCC 710 [NingammaV. United India Insurance Co., Ltd., wherein it is held that "If a borrower of vehicle died in accident, his legal heirs also not entitled to claim compensation under Section 163A of Motor Vehicles Act as Borrower will be considered owner of vehicle."

13. The learned counsel for the respondents relies on the judgment of this Court reported in 2019 (2) TNMAC 188 [Manjula and others V. M.Sakthivel and others] wherein it is held that,

"failure on the part of insurer to disprove that deceased and others travelled along with goods as owners and coolies; owner of goods as also authorised representatives of owner of goods covered by policy as per section 147(1) ; as per permit condition only 3 persons can travel in cabin.; In instant case, no proof that 2 persons were already travelling in cabin; Rule 236 permits 6 persons to travel in goods vehicle; Owner of goods, even if travelled in backside of Van along with goods as contended, entitled to claim compensation. In the said case, the 1st respondent has paid extra premium and therefore, the second respondent -insurance company is liable to pay compensation for the owner of goods and

his representatives".

14. In the Judgment of this Court reported in 2018(1) TANMAC
140 [Chenniappan V. R.Subramani and others], it is stated that,

"....As to the liability, the learned counsel argued that Ext.R.1 is the Insurance Policy, which shows that premium has been received for two employees, that at the relevant time, when the accident took place the appellant was travelling as a coolie accompanying the goods which included goats and their fodder. The additional premium will cover the liability of the claimant and he should be treated as a representative of the owner of the goods'. The learned counsel for the 5th respondent argued that the policy covered liability only for the two employees of the owner of the vehicle and nowhere the claimant has pleaded that he was an employee of the fourth respondent at that relevant time. His subsequent version while tendering evidence that he was working as a coolie under the fourth respondent is an improvement over his pleading and the same has been invented only with a view to fasten liability on the insurance company and no more. Besides the vehicle involved in the accident is a mini door auto, where the seating capacity is only one whereas the claimant in his deposition that he has tendered as P.W.1, had stated that along with him five people travelled in the vehicle. This is far in excess of the permitted seating capacity of the vehicle. If the vehicle had seating capacity for only one to travel, why it received premium for two employees. Whether employee of the owner of the vehicle or coolie of owner of goods, the Insurance Company can extricate itself from liability only if it could prove that the appellant had travelled as a passenger in goods carrier and not one, who accompanies goods loaded in the carrier and held that insurer is as much liable as the owner of the vehicle and the appellants therein were entitled for compensation."

15. Heard the learned counsel on either side and perused the documents placed on record.

16. According to the Tamilnadu Motor Vehicle Rules, 6 persons can travel in the vehicle and it is a policy condition. In the present case, it could be seen from the Certificate of Insurance cum Policy Scheme issued by the Appellant / National Insurance Company that the policy owner of the vehicle has paid Rs.100/- compulsory PA to Owner cum Driver. The Insurance Company, who had already accepted extra premium for compensation for four employees, now, cannot plead that the persons, who had travelled have violated policy condition and not entitled to claim compensation. When the additional premium has been paid,

the Insurance Company is liable to pay the compensation.

17. Further, from the perusal of the order passed by the court below as well as the documents produced before this Court, it is seen that there is no contra evidence produced by the appellant to prove that the deceased persons and the injured person were not employed with Murali, Owner of the vehicle. The insurance Company has not proved that there is brother and sister relationship between the deceased persons; injured person and Murali. The Insurance Policy issued by the appellant also covers four workmen and the additional premium was also received, hence the appellant is liable to pay the compensation to the claimants. The substantial questions of law raised by this Court at the time of admitting the appeal are answered in favour of the claimants/ respondents.

For all the above stated reasons, this Court is not inclined to interfere with the awards passed by the Commissioner for Workmen Compensation at Coonur, Nilgiris District in W.C.Nos.751, 752 and 756 of 2015 dated 02.01.2017. In fine, the Civil Miscellaneous Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Asst.Registrar (Insp Cell)

/true copy/

Sub Asst. Registrar

ssd

To

1. The Commissioner for Workmen Compensation at Coonur,
Nilgiris District

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

C.M.A.Nos.1095 to 1097 of 2018
and C.M.P.Nos.9166 to 9168 of 2018

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