BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1059 of 2017
and
C.M.P.(MD).No.10874 of 2017

The Branch Manager,
Reliance General Insurance Company Limited,
HIG No.55, 80 feet Road,
Anna Nagar,
Madurai -20. ... Appellant/2nd respondent

Vs.

1.K.Muthukutty
2.Parameshwari
3.M.Kasimayan
4.M.Sakthimurugan ... Respondents 1 to 4/ Claimants 1 to 4

5.P.Jeyakaruppan ... 5th respondent / 1st respondent

PRAYER:- Appeal filed under Section 30 of the Employee Compensation Act, against the award, dated 07.06.2017, passed in W.C.No.76 of 2013 on the file of the Commissioner for Employees Compensation cum Deputy Commissioner of Labour, Dindigul.

For appellant : Mr.V.Sakthivel

For respondents 1 to 4 : Mr.N.Ramamoorthy

JUDGMENT

It is a case of fatal. The 1st and 2nd respondents herein/1st and 2nd claimants are father and mother of the deceased Veeramani. The 3rd and 4th respondents herein / 3rd and 4th claimants are brothers of the deceased Veeramani. On 11.08.2009 at about 2.30 a.m., the said Veeramani, while travelling as loadman in the 5th respondent's Tractor and Trailer, thrown out due to rash and negligent driving of the driver of the Tractor and succumbed to the injuries. At the time of the accident, the deceased was aged about 20 years. The claimants filed claim petition in W.C.No.76 of 2013 claiming Rs.9 lakhs as compensation. The 5th respondent herein/1st respondent, who was the owner of the lorry, remained *ex parte* before the Court below. According to the appellant/Insurance Company, at the time of the accident, the deceased travelled on the Mudguard near the driver of the Tractor along with four others and as there is violation of policy condition, the Insurance Company is not liable to pay the compensation. After trial, the Commissioner has directed the appellant/Insurance Company to pay a sum of Rs.4,50,500/- as compensation to the claimants. Now, this appeal has been filed by the appellant / Insurance Company questioning the liability.

2. This appeal was admitted on the following substantial questions of law:

> "(i) The learned Commissioner has not considered the terms and conditions of the Insurance Policy of this appellant?
>
> (ii) The learned Commissioner has not considered the documents submitted by the appellant herein namely Exs.R1 and R2 in a proper manner?
>
> (iii) The learned Commissioner has failed to note that the fifth respondent/first respondent/employer has not appeared before the Commission and has not adduced any contra evidence?
>
> (iv) The learned Commissioner has failed to note that the deceased was travelling the Mudguard near the driver of the Tractor and thereby invited the accident?
>
> (v) The learned Commissioner has failed to note no one is allowed to travel in the Mudguard of the tractor and the insurance issued to the Tractor is not covered the risk of the persons other than the driver?

3.The main contention of the learned counsel for the appellant/Insurance company is that at the time of the accident, the deceased had travelled on the Mudguard near the driver of the Tractor along with five others and therefore, the appellant/Insurance Company is not liable to pay the compensation as there is violation of policy condition. He would further submit that the Commissioner, without properly appreciating Exs.R1 - Insurance Policy and R2 - Registration Certificate of the Vehicle, has erroneously directed the appellant/ Insurance Company to pay the compensation. Thus, he prayed to exonerate the appellant / Insurance Company from the payment of compensation.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. It is not in dispute that the 5^{th} respondent herein / 1^{st} respondent is the owner of the vehicle, as per Ex.R2 – Registration Certificate of the Tractor and Trailer. It is stated in the claim petition that the deceased was working as loadman under the 5^{th} respondent/1^{st} respondent and at the time of the accident, the deceased was sitting on the Tractor near the driver seat. The first claimant, who was examined as PW1, has also stated in his evidence that while travelling in the Tractor vehicle, due to rash and negligent driving of the driver of the vehicle, the deceased fell down from the Tractor and sustained fatal injuries and succumbed to the injuries. The 5^{th} respondent/1^{st} respondent remained *ex parte* before the Tribunal. Though the Insurance company has taken the defence that the deceased had travelled on the Mudguard of the Tractor, the Insurance Company has not substantiated the same through any evidence.

6. As per Ex.R1 – Insurance Policy, the Policy was a package policy and at the time of the accident, the Policy was in force and it is also stated in the Policy that "licensed to carrying capacity including driver - 2". According to the Insurance Company, about five persons had travelled in the Tractor in violation of the policy condition. The first respondent herein, who was examined as PW1, has stated in this evidence that the deceased had travelled along with four others in the vehicle as loadman. In a case where number of passengers travelled beyond the permit level and claimed compensation, the Hon'ble Supreme Court in the decision in **2011 (1) TAN MAC 441 (SC) [United India Insurance Co. Ltd., V. K.M.Poonam]**, has held that the insurance company can be made liable to pay the total amount of the highest awards covered under the policy and the passengers travelled beyond the permit would be treated as third parties. But since no payment has been paid for them, the insurance company has to pay the amount and thereafter, recover from the insured. The decision was followed by this Court in **2013 (1) TAN MAC 850 [Senior Divisional Manager, United India Insurance Company Limited Vs. Ajay Bihani]**. In this case, the deceased alone died due to accident, while travelling in the vehicle in question. In view of the above, the Tribunal has directed the appellant/Insurance Company to pay the entire compensation. This Court does not find any reason to interfere with the award of the Commissioner. Thus, all the questions of law are answered against the appellant/Insurance Company.

7. In the result, this Civil Miscellaneous Appeal is dismissed. It is represented that the entire award amount has already been deposited. Hence, the claimants are permitted to

withdraw the same by filing an application before the Commissioner. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commissioner for Employees Compensation,
   Deputy Commissioner of Labour,
   Dindigul.

2. The Record Keeper,
   V.R. Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 copies)

+1 CC to Mr.V.SAKTHIVEL, Advocate (SR-72476[F] dated 01/07/2019)

Judgment in
C.M.A(MD).No.1059 of 2017
01.07.2019

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