IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	09.11.2020
PRONOUNCED ON	18.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1958 OF 2010
AND
M.P.NO.1 OF 2010

(THROUGH VIDEO CONFERENCING)

The National Insurance Company Limited,
Gobichettipalayam,
Rep. by its Branch Manager,
Raja Street, Main Road,
Gobichettipalayam,
Erode District. ... Appellant/ 3rd Respondent

Vs.

1.E.A.Palanisamy (Died) ...1st Respondent/1st Petitioner

2.Sakunthala ...2nd Respondent/2nd Petitioner

3.E.Sathishkumar

4.R.Ayyavoo naicker

5.Minor. Sumithra
D/o. Late E.A.Palanisamy

6.Minor. Hemalatha
D/o. Late E.A.Palanisamy

(Minors are rep. by next friend,
mother Sakunthala (R2) ... Respondents/ Respondents

[Respondents 5 and 6 brought on record as LRs. of the deceased Respondent 1 vide order of this Court dated 14.06.2016 made in M.P.No.1 of 2015 in C.M.A.No.1958 of 2010]

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.12.2009 made in O.P.No.399 of 2008 on the file of the Motor Accidents

Claims Tribunal (Additional District Judge / Fast Track Court II), Gobichettipalayam.

For Appellant : Mr.D.Baskaran

For R2 : Mr.Ma.P.Thangavel

For R4, R5 & R6 : No appearance

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 10.12.2009, passed by the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court No.II) Gobichettipalayam in M.C.O.P.No.399 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,23,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of realization and cost, payable by the appellant Insurance Company to the 1st and 2nd respondents who were the claimants before the Tribunal.

3. The 1st and 2nd respondents/claimants are the parents of the deceased Surya Prakash who was aged about 10 years when he met with a fatal accident on 12.08.2008 while travelling on the insured tractor bearing Reg.TDX 9487 belonging to the 2nd respondent insured with the appellant-Insurance Company.

4. The deceased Surya Prakash was said to be sitting on the cross plate (குறுக்கு பலகை) which was attached at the back of the insured tractor. It was alleged that the insured tractor was driven by its driver in a rash and negligent manner, as a result of which the deceased who was siting on the cross plate fell down and sustained fatal injuries and died on the way to hospital.

5. In this appeal, the appellant/Insurance Company has challenged the impugned Judgment and Decree on the ground that the Tribunal failed to note that the deceased Surya Prakash was a gratuitous passenger and therefore, the Tribunal ought not have awarded the compensation to the 1st and the 2nd respondents/claimants.

6. The learned counsel for the appellant / Insurance Company submitted that the tractor is a special purpose vehicle with a single seating capacity for driver of the tractor. Therefore, no liability can be fastened on the appellant / insurance company.

7. The learned counsel for the appellant/Insurance Company has drawn my attention to the plethora of decisions of the Hon'ble Supreme Court and the High Court as detailed below :

i. The New India Assurance Co., Ltd., Pollachi Vs. Murugammal and Others, CDJ 2020 MHC 3025;
ii. United India Insurance Co., Ltd., Anna Salai Vs. Selvi and Others, CDJ 2020 MHC 3150;
iii. New India Ass. Co Ltd Vs. Asha Rani & Others; 2003 ACJ 1
iv. Oriental Insurance Co., Ltd., Vs. Devireddy & Others, (2003) 2 SCC 339 ;
v. National Ins Co. Ltd. Vs. Baljit Kaur & Others, 2004 (1) CTC 210 ;
vi. National Ins Co. Ltd. Vs. V.Chinnamma & Ors., 2005 (1) LW 92 ;
vii. M.V.Jayadevappa & ano. Vs. Oriental Fire & gen & Ors., 2005 ACJ 1801;
viii. National Ins. Co. Ltd., Vs. Bommithi Subbhayamma & Ors., 2005 1 CTC 706;
ix. New India Assu. Co. Ltd Vs. Vedwati & Ors., 2007 ACJ 1043;
x. Oriental Insurance Co. Ltd. Vs. Meena Variya & Others., 2007(3) SC 136;
xi. Thokchom Ongbi Sangeetha Vs. Oriental Ins. Co. Ltd & Others, CDJ 2007 SC;
xii. National Insurance Co. Ltd. Vs. Prema Devi & Others, CDJ 2008 SC 354;
xiii. New India Assu. Co Ltd. Vs. Rattani & Others, 2009 ACJ 92;
xiv. National Insur. Co Ltd. Vs. Parvathneni & ano., 2009 (2) TN MAC 241 (SC);
xv. United India Ins.Co Ltd Vs. Nagammal & Oths., 2009 (1) TN MAC 1;
xvi. N.Ganesan Vs. Thilagavathi & Oths., 2010 (2) TN MAC 80;
xvii. National Ins.Co Ltd Vs. Chennaiammal & Oths., 2008 (8)MLJ 412;
xviii. Sanjeev Kumar Samrat Vs. National Insurance Co., Ltd., 2013 (1) TN MAC 15;
xix. National Insuranace Co., Ltd., Vs. Savitri Devi & Oths., (2013) 11 SC 554;

xx.United India Insu. Vs. M.Thangavel & ano., 2011 (2) TN MAC 774;

xxi.Oriental Insu Co. Ltd. Vs. R.Siva & Oths., 2013 (1) TN MAC 198;

xxii.Iffco-Tokio Gen Ins. Vs. Muthumani & Oths., 2014 (2)TN MAC 442;

xxiii.R.Muthuraj Vs. Rangasamy & Oths., 2016 (2) TN MAC 388;

xxiv.Sanju Devi & Oths., Vs. 2016 (2) MAC 750;

xxv.National Ins. Co. Ltd. Vs. M.Pdmini & Oths., 2017 (1) TN MAC 566;

xxvi.C.Pinniammal Vs. Jokkammal & ano., 2017 (1) TN MAC 622;

xxvii.TN New India Assu.Co. Ltd. Vs. Ashok Kumar Yodav., 2017 (1) MAC 796;

xxviii.United India Ins.Co. Ltd. Vs. Sheela & ano., 2017 (2) TN MAC 261;

xxix.Oriental Insu Co. Ltd. Vs. Kamatchi & Oths., CDJ 2017 MHC 619;

xxx.Bajaj Allianz Gen.Co. Ltd. Vs. Seeniammal & Oths., CDJ 2017 MHC 467;

xxxi.New India Assu.Co. Ltd. Vs. Minor.Vivek & ano., CDJ 2017 MHC 5473;

xxxii.Bajaj Allianz Gen. Co. Ltd., Madurai Vs. Viwan Ali & ano., 2017 (2) TN MAC 214;

xxxiii.National Insurance Co. Ltd., MAC 253 Vs. Rajasekaran & ano., 2017 (2) TN MAC 253;

xxxiv.Oriental Ins.Co. Ltd Vs. Arumai Kani & ano., 2017 (2) TN MAC 815;

xxxv.Bharati AXA General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and Others, 2018(2) TN MAC 731.

8. The learned counsel for the 2nd respondent/2nd claimant defending the impugned Judgment and Decree submitted that the Tribunal has awarded the compensation since the insurer viz., the appellant/Insurance Company had collected a premium of Rs.25/- for one employee and since the deceased Surya Prakash travelled as an employee. Therefore, the Tribunal has correctly awarded the compensation to be paid by the appellant/Insurance Company.

9. Defending the impugned order, the learned counsel for the 2nd respondent also submits that even though the decisions cited by the learned counsel for the appellant have held that no compensation can be paid in case of death or injury to a gratuitous passenger, the Hon'ble Supreme Court in Anu Bhanvara etc., vs. Iffco Tokio General Insurance Co., Ltd., 2019 (2) TN MAC 433 SC, has ordered pay and recovery of the compensation in case of young boys who met with an accident and suffered permanent disability. A reference to paragraph Nos.9 & 11 of the said decision of the Hon'ble Supreme Court was made which reads as under:-

> " 9. .... the principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realise/recover the same from the owner and driver of the vehicle. In support of his submission, learned counsel for the appellants has re
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> 11............The claimants in the present case are young children who have suffered permanent disability on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the principle of "pay and recover" should be directed to be invoked in the present case. ''

10. Heard the learned counsel for the appellant / Insurance Company and the learned counsel for the 2nd respondent. I have perused the impugned Judgment and Decree and evidence on record which were produced before the Tribunal. I have also perused the Judgments cited by the learned counsel for the appellant and the 2nd respondent and IMT - 40 of the India Motorcycle Tariff which reads as under:-

> " Legal Liability to paid driver and/or Conductor and/or cleaner employed in connection with the operation of Motor vehicle. (For buses, taxis and motorized three/four wheelers under under IMT15 covers the risk of the insured or any named person other than paid driver or cleaner."

11. There is no question of the insurer being made liable in

case of an accident where gratuitous passenger is either injured or meets with a fatal accident. In this case, it would be incorrect to assume that the deceased travelled as an employee considering the fact that the deceased was aged about only 10 years at the time of the accident. Further, a tractor is not designed to carry any person other than the driver on its chassis and body. It only has a single seat for the driver to sit and drive it. The deceased was sitting on the cross plate which was perhaps put by the owner to carry persons/small belongs without authorization. Thus, the owner and the driver of the tractor were irresponsible in carrying the deceased minor and were therefore liable for consequences.

12. The decision cited by the learned counsel for the 2nd respondent in Anu Bhanvara Etc. case referred to supra cannot be applied since the relief give therein by the Hon'ble Supreme Court was under Article 142 of the Constitution of India. It cannot be applied to the facts of the present case. Therefore, this appeal is liable to be allowed.

13. Before parting, I would like to lay emphasis on the fact that the present legislation is working to the disadvantage of victims of road accident and their dependents. The Hon'ble Supreme Court in Jai Prakash Vs. National Insurance Company Limited and Others, (2010) 2 SCC 607 has held that to ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third-party insurance and an alternative scheme involving a collection of a one-time (lifetime) third-party insurance premium by a central insurance agency in respect of every vehicle sold (in a manner similar to the collection of lifetime road tax). The fund created by collection of such third-party insurance can be augmented/supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. The Hon'ble Supreme Court has further observed as follows:-

> 38. India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing road safety measures and establishment of large number of trauma centres and first-aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down road safety standards and norms, enforce road safety

measures, establish and run trauma centres, establish first-aid centres in petrol stations, and carry out research/data collection for accident prevention.

39. Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to the Accident Tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

Securing the compensation to the victims of accidents involving uninsured vehicles

41.Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008 in this behalf.

14. However, the precious little has been done so far. As the present scheme of the Act and precedent of the court are against the gratuitous passengers, the present Civil Miscellaneous Appeal filed by the appellant Insurance Company has to be allowed.

15. It appears that the appellant/Insurance Company had deposited a sum of Rs.1,50,000/- to the credit of M.C.O.P.No.399 of 2008 pursuant to the order dated 02.08.2010. Since the appeal is being allowed, the appellant is permitted to withdraw the amount deposited before the Tribunal together with interest accrued thereon.

16. While allowing this appeal, liberty is also given to the 2nd respondent and the 5th and the 6th respondents who are the legal representatives of the 1st respondent/claimant, to recover

the amount of compensation awarded by the Tribunal from the owner of the Tractor, i.e, 4th respondent herein, in accordance with law without filing a separate claim petition.

17. This Civil Miscellaneous Appeal is allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd / jen

To:-

The Motor Accidents Claims Tribunal
(Additional District Judge / Fast Track Court II),
Gobichettipalayam.

Copy To

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

+1cc to Mr.D.Baskaran, Advocate, S.R.No.36989
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.37136

C.M.A.No.1958 of 2010
and M.P.No.1 of 2010

PT(CO)
PM/29/10/2021