IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2020

PRONOUNED ON : 18.09.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2241 of 2010

1.Pachiayammal
2.Selvaraji ... Appellants/Petitioners

vs

1.Elumalai
2.United India Insurance Co., Ltd.,
No.28, Meenakshi Complex,
28, Mailam Road,
Tindivanam. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in M.A.C.T.O.P.No.367 of 2008, dated 24.10.2009, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) Fast Track Court No.I, Tindivanam.

For Appellants : Mr.R.Thirugnanam

For R1 : No Appearance

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants against the impugned Judgment and Decree dated 24.10.2009 passed by the Motor Accidents Claims Tribunal, (Additional District Judge), Fast Track Court No.1, Tindivanam in M.A.C.T.O.P.No.367 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,75,000/- as compensation together with interest at 7.5% per annum from the date of institution of the claim petition till the date of payment, to the

appellants/claimants as against the amount of Rs.10,00,000/- claimed by the appellants/claimants. While awarding compensation to the appellant, the Tribunal has exonerated the 2nd respondent.

3. Aggrieved by the impugned Judgment and decree passed by the Tribunal, the appellants/claimants has filed this appeal and seek to fasten the liability on the 2nd respondent Insurance Company. Appellants are the aged parents (dependents) of the deceased Arulmurugan aged about 21 years at the time of his death.

4. In this appeal, the 2nd respondent Insurance Company defended the impugned judgment and decree passed by the Tribunal stated that the Tribunal has rightly held that the compensation is to be paid to the appellants/claimants only by the 1st respondent owner of the tractor inasmuch as the deceased Arulmurugan sat on the mudguard of the insured Tractor. Since the Tractor does not have seating capacity of more than one person i.e. driver of the Tractor, the question of the 2nd respondent Insurance Company being fastened with the liability, cannot be countenanced.

5. Countering the aforesaid defence of the 2nd respondent Insurance Company, the learned counsel for the appellants submits that the 2nd respondent Insurance Company has not only collected premium for 3rd party risk for a sum of Rs.800/- but has also collected a separate premium for personal accident for owner cum driver and employee by way of additional premium of Rs.100/- and Rs.25/- respectively.

6. The learned counsel for the appellants submitted that the Tribunal has failed to take into consideration that the tractor was not used for delivering any house hold articles and the deceased was permitted to travel in the tractor as its cleaner by its owner the first respondent. It is submitted that the deceased had not travelled as an unauthorised passenger.

7. The learned counsel for the appellant relied on the following decisions:-

i)Branch Manager, National Insurance Company Limited Vs. Erappa and Others, 2019 (2) TN MAC 161.

ii) The Divisional Manager, The New India Assurance Company Limited Vs. New India Assurance Co.Ltd. Vs. C.M.Jaya, 2013 (2) TLNJ 491 (Civil).

iii) New India Assurance Co., Ltd., s Govindan & Others, 2014(1) TN MAC 267

8. I have considered the evidence on record, the claim petition and the arguments advanced by the learned counsel for the appellants and the 2nd respondent Insurance Company. I have also perused the evidence on record.

9. The deceased Arulmurugan met with an accident on 17.09.2007 at about 4.30 p.m. when he was travelling on the mudguard of the insured Tractor bearing registration No.TN-32-T-2282 belonging to the 1st respondent insured with the 2nd respondent-Insurance Company ostensibly as its cleaner.

10. The deceased Arulmurugan was sitting on the left side mudguard of the insured Tractor and was returning to Endiyur after unloading the House hold articles at Kadapakkam when the driver of the tractor is said to have driven the insured Tractor in a rash and negligent manner at a high speed, as a result of which, the deceased Arulmurugan slipped from the Tractor and fell down and sustained grievous injuries and later he died in the hospital. Therefore, the appellants filed the above claim petition before the Tribunal for compensation of Rs.10,00,000/-.

11. The Tribunal has exonerated the 2nd respondent insurance company on the ground that the policy does not cover the risk of a person other than the third party, employee driver or driver-cum-owner in case of death or injury to them.

12. The learned counsel for the 2nd respondent relied on the following decisions:-

i) New India Assurance Co.Ltd. Vs. C.M.Jaya, 2002 AIR SCW 259, (5 Judges)

ii) New India Assurance Co., Ltd., Vs Darshanadevi & Others, (2008) 7 SCC 416

iii) United India Insurance Co., Ltd., Vs. K.K. Suresh, (2008) 12 SCC 657

iv) United India Insurance Co., Ltd. vs. M.Thangavel, 2011(2) TN MAC 774

v) New India Assurance Co., Ltd., vs. Chinnamma, (2004) 8 SCC 697.

vi) New India Assurance Co., Ltd., vs. Vedwati & others, (2007) 9 SCC 486.

13. The expression "tractor" has been defined in section 2 (44) of the Motor Vehicles Act, 1988 to mean a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller. Ex. R.1 is the RC book of the insured tractor bearing registration No.T.N.32 T 2282. It is classified as a tractor (agriculture) with a seating capacity of only one

person. Admittedly, the insured tractor was designed to carry only one person. It provides for only a single seat for a driver to sit on it and to drive it. The driver could be an employee or the owner himself

14. Ex.R 2 insurance policy indicates that the 1st respondent owner of the insured tractor had paid premium of Rs.800/- against third-party risk a premium of Rs.100/- for compulsory personal accident cover for himself, for a sum of Rs.2 lakhs and had paid further sum of Rs.25/- to cover the risk of death of injury of one employee under the Workmen's Compensation Act, 1923. That, apart the owner had also paid for a sum of Rs.1,785/- for own damage .

15. The insurance policy incorporates IMT 40 which deals with Legal liability to pay driver/or conductor and/Cleaner employed in connection with the operation of motor vehicle. (For buses, taxis and motorised 3/4 wheelers commercial vehicles tariff). Relevant portion of the policy also reads as follows:-

> " The premium to be calculated and paid while taking insurance of the vehicle concerned at the rate of Rs.25/- per driver and/or conductor and/or Cleaner. "

16. The expression" Rs. 25 per driver and/or conductor and/or cleaner "implies that the policy cover the liability of owner in case of death or injury of his employees namely a driver or a conductor or a cleaner. Only one of such person could be covered under the policy apart from the risk arising out of third-party liability and for the personal cover of the owner himself in which case the insurance company is liable a sum of Rs.2 lakhs/-. No extra premium was paid or collected for a person other than the driver employed to drive the insured tractor by the 1st respondent - owner.

17. In this case, the insured tractor was driven by the driver. The deceased travelled in the insured tractor apparently as a cleaner. However, there is no provision for a separate seat in the tractor for another person to sit and travel whether as an employee of the owner of the tractor in the capacity as a cleaner or as the owner of the goods or his representative so as to come within the purview of section 147 of the Motor Vehicles Act, 1988. Therefore, the appellant Insurance Company cannot be made liable. Either the owner could drive the insured tractor or a driver employed could drive the tractor. No other person could travel in it. Apart from the owner only a driver could travel. Further, Ex.R2- Insurance policy covers Vide Ex.R2 covers only risk associated with the use of the insured tractor for carrying agricultural and

forestry purpose. It did not cover (1)Use for hire or reward or for raising racing making reliability trial or speed testing (2) Use for the carriage of passengers for hire or for reward. (3) Use whilst drawing a greater number of trailers in all than is permitted by law.

18. Further, even as per the claim statement before the Tribunal, the case of the claimant was that the insured tractor was used for delivering household articles and therefore the insured tractor was not used for agricultural or forest purpose. Since the insured tractor was used for delivering goods and was not covered under the policy, the appellant-Insurance Company cannot held liable . That apart, it is also clear that the insured tractor was not fitted with trailer at the time of accident nor the policy covers any risk thereof. Therefore, the 2^{nd} respondent insurance company cannot be fastened with liability. The deceased sat on the left side mudguard and fell from it and suffered grievous injuries and later succumbed to injuries and died on 17.09.2007. Therefore, it cannot be said the appellant-Insurance Company was liable under the policy.

19. The Hon'ble Supreme Court in the exercise of its power under article 142 of the Constitution of India has however allowed pay and recovery of the compensation considering the plight of the claimants in New India Insurance Company versus Darshana Devi and others (2008) 7 SCC 416. In United Insurance Company Limited versus Suresh K.K. and another (2008) 12 SCC 657 it held that though a coolie worker was not covered under Section 147 of the Motor Vehicles Act, 1988 and since such person would not be in a position to realise the compensation from the owner of the insured vehicle, the insurance company was directed to pay and recover the amount from the owner of the vehicle. The court also observed that a driver of a three wheeler goods carriage could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle was supposed to share the seat of the driver. Therefore, violation of the conditions of the contract of insurance was approved.

20. The Hon'ble Supreme Court further held that the Tribunal and the High Court therefore should have held that the owner of the vehicle was guilty of each of conditions of the policy. However, taking note of the fact that the accident had taken place sometime 1999 and considering the fact that the claimant was a coolie worker and would be in a position to realise the due from the owner of the vehicle, it was of the view that to do complete justice to the parties, a direction can be given to the appellant insurance company to pay and recover the amount from the owner of the vehicle to serve the ends of

justice.While passing the aforesaid order, the Hon'ble Supreme Court also noted the fact that the insurance company had deposited the amount to the account of the case before the Tribunal.

21. This court on an earlier occasion United India Insurance Company Limited Versus M.Thangavel and K.S Kumar 2011 (2) T.N. M AC 774 considered a plethora of decisions and concluded that where there was a statutory violation by the claimant and the insurance company cannot be made liable to pay compensation. There the claimant travelled in the insured lorry and while trying to get down from the insured lorry, the driver of the insured lorry drove the lorry as a result of which, the claimant lost his balance and fell down and sustained since injuries. Therefore, a claim was filed against the owner of the lorry and its insurer. The Tribunal held that the insurance company was liable to pay compensation together with interest at 7.5%. This Court held that the Insurance Company cannot be liable.

22. In the facts of the present case also the plight of the appellant’s/claimants are similar to that of the claimants in the two decisions of the Hon'ble Supreme Court in New India Insurance Company versus Darshana Devi and others (2008) 7 SCC 416 and United Insurance Company Limited versus Suresh K.K. and another (2008) 12SCC 65, The appellants will not in a position to recover the amount from the 1st respondent owner of the insured tractor. However, the powers of this Court is not on wide as the power of the Hon'ble Supreme Court under Article 142 of the Constitution of India. Therefore, dependents of the deceased continue to suffer as no compensation can be awarded under the scheme of the Act even though there is a dire need for awarding compensation not only to accident victims but also to be dependents of such accident victims. The powers of the courts are limited in view of the limitation in Section 147 of the Act. The family of an accident victim often reduced to penury and a death of a sole of a bread winner can shatter the comfort and stability in the family and put them in a disadvantage on position in the society. Often families pushed to the brink of indigence with no social securities in place. The powers of this court limited and there is little that can be done except to lament and remind the Government, Legislators and the Policymakers to take positive steps that was pointed out by the Hon'ble Supreme Court in Jai Prakash Versus National Insurance Co Ltd (2010) 2 SCC 607.

23. The Hon'ble Supreme Court in Jai Prakash Versus National Insurance Co Ltd (2010) 2 SCC 607 has noted by requirement of compensating all the accident victims and to ensure the same, it observed that it is necessary to formulate a

more comprehensive scheme for payment of compensation to all the accident victims of road accidents in place of the present system of third-party insurance.

24. It observed that as an alternative scheme involving collection of a one-time (lifetime) third-party insurance premium by central insurance agency in respect of every vehicle sold (in a manner similar to the collection of (life time) road tax be evolved. The fund to be created by such collection was suggested to be augmented and supplemented by an appropriate road accidents cess/surcharge on the price of petrol/diesel sold across the country. The Hon'ble Supreme Court also observed that such a hybrid model which involves collection of a fixed life time premium with regard to such vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India and will address a major grievance of the insurance company that their outgoings by way of compensation in the motor accident claim was 4 times the amount received as motor insurance premia.

25. The Hon'ble Supreme Court also said the definition of the expression third-party should be amended to cover any accident victim (i,e. any 3rd party, other than the owner) and increasing the premia, if necessary. The Hon'ble Supreme Court also observed that there should be an increase in the quantum of compensation payable under section 161 of the Act. The court also recommended creation of Road Safety Bureau to ensure road safety measures, standards and norms are formed and implemented etc etera.

26. The Hon'ble Supreme Court also recommended for enactment of a comprehensive and unified statute dealing with accident. It also recommended rationalisation of 2nd schedule to the Motor Vehicles Act, 1988. The Hon'ble Supreme Court also recommended securing the compensation of victims of accidents involving uninsured vehicles as well.

27. Though, the Supreme Court had given the above guidelines to be followed by the Government, Legislators and the Policymakers, precious little appears to have been done to ameliorate the situation and thus the accident victims and their dependents go without getting any compensation.

28. This court cannot direct the 2nd respondent insurance company to pay the compensation to the appellants and in view of the limited powers vested with it under Section 173 of the Motor Vehicles Act, 1988. At the same time, considering the plight of the appellants, I am inclined to direct the 2nd respondent-Insurance Compay to deposit a sum of Rs.50,000/- towards " no fault liability under Section 140 of the Motor Vehicles Act,

1988, together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. However, liberty is given to the 2nd respondent to pay the aforesaid amount to the appellants and recover the same from the 1st respondent-owner of the vehicle.

29. On such deposit of a sum of Rs.50,000/-, the appellants/claimants are permitted to withdraw the same equally, less any amount already withdrawn, by filing suitable applications before the Tribunal.

30. Liberty is given to the appellants to recover the balance amount of Rs.3,25,000/- together with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of deposit, from the 1st respondent-owner of the vehicle, in accordance with law and the amount shall be shared by both the appellants equally.

31. The civil miscellaneous appeal is disposed in terms of the above observations. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kkd/jen

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Motor Accidents Claims Tribunal
(Additional District Judge) Fast Track Court No.I,
Tindivanam.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.30722
+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.30777

C.M.A.No.2241 of 2010

CB(29/04/2021)