

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1622 of 2013
and MP.No.1 of 2013

The Oriental Insurance Company Limited,
Maria Joseph Building, First floor,
555/1, Government Hospital Road,
Theni. ... Appellant/2nd Respondent

Vs.

1.A.Balan

2.B.Vijaya ... Respondents 1 & 2/Petitioners

3.K.K.Shanmugam ... 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.396 of 2008 dated 27.01.2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.Zhenathbegum for
Mr.T.Murugamanickam for RR1 and 2
R3 - Served. Name printed.
No appearance.

J U D G M E N T

This appeal is filed by the appellant/insurance company against the judgment and decree made in MCOP.No.396 of 2008 dated 27.01.2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal.

2. The case of the claimants is that on 22.04.2008 at about 2.15pm the deceased Sathishkumar was riding TN37-AN-4359 Baja CT 100 bike, when he was going through Velayuthampalayam Karur to Velur Road from west to east, while nearing Ponni Vegetable shop at that time, the tractor bearing No.TN47-P-8214 coming in the same direction rashly and negligently dashed against the deceased. Due to the accident, the deceased died on the spot.

At the time of accident, the deceased was aged about 25 years and working as a driver and earning a sum of Rs.8,000/p.m. and the only son to the claimants who are father and mother of the deceased.

3. The insurance company filed counter inter alia stating that the second respondent therein is the insurer of the tractor. At the time of accident, two trailers were attached with the tractor, attaching two trailers with the tractor is violation of policy conditions and hence, the insurance company is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 to Ex.P8. On the side of the respondents, RW1 was examined and marked Ex.R1 and Ex.R2.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company stated that due to the accident the deceased died on the spot. The driver of the tractor attached two trailers with the tractor, which is clear violation of policy conditions. Ex.P1 is the FIR in Cr.No.236 of 2008 has been registered against the driver of the tractor under Section 304A on the file of the Velayuthapalayam Police Station. Attaching one trailer is permissible under the policy conditions and two trailer is in violation of policy condition of the insurer. The learned counsel also prays to pass the judgment for pay and recovery from the owner of the tractor, for violating the conditions stipulated in the insurance policy.

7. The learned counsel for the respondents/claimants would submit that the deceased is the only son to the claimants and he is sole breadwinner of the family, due to the accident the claimants lost their only son. The claimants are aged persons and not able to do any work and not able to eke out their livelihood. The tractor was insured with the appellant/insurance company, hence the appellant is liable to pay the compensation to the claimants.

8. On a perusal of records, it is seen that the Tribunal has wrongly fixed the liability on the appellant/insurance company. The content of the FIR clearly says that the driver of the tractor attached two trailers in the tractor driven by him. The policy will cover only one trailer if insured separately. The Tribunal instead of directly fastening the liability against the owner of the vehicle, erroneously directed the appellant/insurance company and the owner of the vehicle to pay the compensation jointly and severally to the claimants. This

Court is of the view that the owner of the tractor alone is liable to pay the compensation. Hence, the appellant being the insurer of the tractor is directed to pay the compensation to the claimants and thereafter, is at liberty to initiate proceedings against the owner of the tractor for recovering the compensation amount, in accordance with law.

9. In view of the above discussion, the civil miscellaneous appeal is allowed by setting aside the judgment and decree made in MCOP.No.396 of 2008 dated 27.01.2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal. The appellant/insurance company is at liberty to proceed against the owner of the tractor for taking steps to recover the compensation in accordance with law. The judgment of the Tribunal remain unaltered in other respects. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

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To

Principal District Judge,
The Motor Accident Claims Tribunal,
Namakkal.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 9871
+1cc to Mr.Zeenath Bagum, Advocate, S.R.No. 7259

C.M.A.No.1622 of 2013

RSK (CO)
GN(29/04/2021)