

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.09.2020

Pronounced on: 08.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.265 of 2015

and

M.P.No.1 of 2015

The United India Insurance Co.Ltd.,
Venkateswara Complex, No.100, South Street,
Chidambaram

...Appellant

/versus/

1.Emili

2.Johnny Nishan (Minor)

3.Vijay Nishan (Minor)

Minors rep.by their mother and next friend Emili

4.Mathiadoss

5.Fathima Mary

6.Chandra Kasu

...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment made in M.C.O.P.No.188 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge Fast Track Court No.1), Chidambaram, dated 13.11.2007.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R5 : Mr.S.Kumaradevan

For R6 : Not ready notice

J U D G M E N T

(The case has been heard through video conference)

The Insurance Company is the appellant. Fixation of liability on the insurer is questioned in this appeal.

2. The claimants are the dependants of the deceased John Bosco Joseph Raj @ Raj, who died in the motor accident on 02/01/2006. The case of the claimants is that the deceased was seated next to the driver of the tractor carrying sugar cane in the trailer. He was travelling as load man. Due to negligent

driving of the tractor driver, the deceased fell from the moving vehicle and got crushed under the wheels. The claimants sought Rs.10 lakhs for the loss. The owner of the tractor and the insurer were made respondents.

3. The insurer contested the claim, stating that the claimants have no locus standi to claim compensation against the insurer. The victim was travelling in the tractor mudguard. He is an unauthorised passenger in the goods carrier. He fell on his own and not due to the rash and negligent driving. The quantum of the compensation claimed is excessive and exaggerated.

4. The Tribunal held the insurer liable. Estimated the loss of income as Rs.5,76,000/- taking into account his age as 36 years, income as Rs.3000/- p.m., and 16 as multiplier. The Tribunal did not deduct for personal expenditure and also did not add anything towards future prospects. For transport and funeral expenses awarded Rs.30,000/- totally a sum of Rs 6,06,000/- with 7.5% interest p.a.

5. In the appeal, the learned counsel for the insurer contented that the Tribunal ought to have totally exonerated the insurer since the deceased was travelling on the mudguard of the tractor, which is violation of the policy condition and the statute. The Tribunal overlooked the fact that the seating capacity of the tractor was only one. Except the driver no other persons are permitted to travel in the tractor. In case of policy violation, the insurer is not liable to indemnify. Even the principle of pay and recovery will not apply if the violation is grave in nature and in violation of statute. Further the Tribunal had awarded excessive compensation even without deducting 1/3rd for the personal expenses of the deceased.

6. The learned counsel for the respondents would submit that the insurer did not prove violation of policy condition. The victim was travelling in the seat next to the driver. The accident occurred when the driver of the tractor linked to trailer rash and negligently hit the uneven road. The victim was travelling along with the sugar cane as loadman. Without any material proof for violation of policy condition, the appeal is filed frivolously. In fact, the claimants are entitled for future prospects and compensation under other non conventional

heads, which has been denied by the Tribunal.

7. Before the Tribunal the claimants have examined two witnesses and marked 3 exhibits. On the side of the respondents no witness no document marked.

8. The Tribunal based on the evidence of the eye witnesses and the FIR ,Motor Vehicle Inspector Report and Post-mortem report held the accident occurred due to the negligence of the tractor driver. The appellant being the insurer of the tractor and trailer liable to pay the compensation of Rs.6,06,000/- to the claimants.

9. The contention of the appellant that the deceased was an unauthorised passenger and he travelled in violation of policy condition is not supported by any documents. The evidence before this Court as spoken by PW-2 is that, the accident occurred when the tractor carrying the sugarcane in the trailer driven negligently by its driver. The MVI report mentions about the insurance coverage of the tractor and trailer with the appellant. The evidence of the claimants that the deceased was travelling as loadman along with the goods is not disproved. The best evidence are the policy and the RC of the vehicle. Insurer to establish violation of policy condition and statutory conditions, should have placed those documents before the Tribunal. Having failed to produce evidence to prove policy violation and statutory violation, the insurer cannot be exonerated from its liability of indemnifying the insured.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

rpl

To

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

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

+1 cc to M/s.S.Kumara Devan Advocate sr29188

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