

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 14.09.2020
PRONOUNCED ON : 21.09.2020
CORAM
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
Civil Miscellaneous Appeal No.2147 of 2016 and
C.M.P.Nos.15424 of 2016 and 5296 of 2017

The New India Assurance Co. Ltd.,
No.5, Raja Mill Road,
Pollachi - 642 001.

....Appellant/3rd respondent

vs

1.Murugammal

2.Minor Sumetha
(rep. By mother & guardian
Murugammal)

3.Murugan

4.M.Suppal

...Respondents 1 to 4/
Petitioners

5.S.Chenniappan

...5th Respondent/
1st respondent

6.H.Rathinasamy

...6th Respondent/2nd Respondent

(5th respondent remained
set exparte before the Tribunal)

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed by the Tribunal in the above M.C.O.P.No.48 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Udumalpet dated 30.04.2015.

For Appellant : Mr.M.Krishnamoorthy
For Respondents 1 to 4 : Mr.K.Varadhakamaraj
For R.5 : Exparte

JUDGMENT

This appeal is preferred by the Insurance Company being aggrieved and dissatisfied with the award passed by the the Motor Accident Claims Tribunal (Subordinate Judge) at Udumalpet.

2.The respondents 1 to 4 herein are the claimants before the Tribunal. The respondents 5 and 6 are the Driver and owner of the Tractor respectively. Before the Tribunal, both the Driver and the Owner of the Tractor remained absent and they were set exparte.

3.The content of the claim petition, in short, is as follows:-

On 06.12.2011, at about 4.30 pm, the deceased M.Shenniappan travelled as a Loadman Agricultural Coolie in a Tractor from Vallakundapuram to the brick chamber at Gundurotti Kadu to deliver coconut shell. The Tractor bearing Registration No.TN 41 AC 3667 was driven by the Driver/fifth respondent herein. When the Tractor was nearing the Mudala Gounder Thoppu situated in South to North of Vallakundapuram to Kodingiyam road suddenly the Driver of the Tractor with very great speed in rash and negligent manner rode the vehicle without control. Due to this sudden act, the deceased fell in the road. The Tractor ran over the deceased and also got capsized. The deceased sustained severe injuries on his vital parts and died on the spot.

4.The claimants who are the wife, minor daughter and parents of the deceased have claimed compensation of Rs.20 lakhs stating that the deceased at the time of his death was earning Rs.20,000/- per month as agricultural Coolie, coconut divider and milk vendor. Since, the accident occurred while the deceased was travelling in the Tractor as a Loadman, they are entitled to seek compensation. The accident had taken place only due to the rash and negligent driving of the fifth respondent while he was in the course of the employment of the sixth respondent. The appellant is the Insurance Company of the Tractor bearing registration No.TN 41 AC 3667. Hence all of them were arrayed as respondents to pay compensation to the claimants jointly and severally.

5.The Insurance Company who is the appellant herein has filed counter with specific averments that the Driver of the Tractor/fifth respondent herein did not have a driving licence at the time of accident. Since the driving licence not produced for the verification of Motor Vehicle Inspector, check report was issued against the sixth respondent. The deceased was travelling as unauthorised passenger on the mud guard of the

Tractor. Hence, the claimants are not entitled to file this claim petition.

6. Before the Tribunal, two witnesses viz., P.W.1, the first claimant and P.W.2, an eye witness to the accident were examined on behalf of the claimants. Seven exhibits were marked through them. On behalf of the Insurance Company, two witnesses were examined to prove that the Driver of the offending vehicle had no driving licence and the insurance policy of the offending vehicle does not cover passengers.

7. The Tribunal accepted that the Driver of the offending vehicle had no Driving licence. However, awarded compensation of Rs.8,59,500/- with interest @ 7.5% per annum to be apportioned among the claimants in a specific proportion with direction to the Insurer to pay and then recover from the vehicle owner.

8. In the appeal, the Insurance Company has questioned the reasoning of the Tribunal for not exonerating it from liability. When the Tractor has provision only for Driver and there is no seating capacity to accommodate passenger, the Tribunal erred in rejecting the plea that the deceased was an unauthorised passenger. Though the insurance policy is a package policy, it does not cover passenger travelling on the mud guards and it covers only the Driver.

9. The learned counsel for the appellant would submit that the award of the Tribunal fastening the liability on the Insurance Company to pay and then recover from the vehicle owner is contrary to law and the decisions of the Madras High Court and the Hon'ble Supreme Court.

10. The learned counsel for the respondents 1 to 4/ claimants in contrary would submit that the appellant Insurance Company has not marked the policy before the Tribunal. Hence, they cannot deny the liability on the ground of violation of policy condition. The Insurance Company has a contractual and statutory liability to compensate the deceased who travelled in the tractor as a Coolie. He relied upon the judgments of the Madras High Court and the Hon'ble Supreme Court which are in his favour.

11. The accident occurred on 06.12.2011 when the deceased travelling in a Tractor along with coconut shells intended to be delivered at a brick chamber. The Tractor had a permit for agricultural purpose only but it had been engaged to transport coconut shell to a brick chamber which is admittedly not an agricultural activity. It is stated in the claim petition that the deceased was travelling in the Tractor as a Loadman.

12.The Hon'ble Supreme Court, in New India Assurance Co. Ltd., v. Asha Rani and others (2003(2) SCC 223), has held as follows:-

"25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'."

13.Section 147 of the Motor Vehicle Act speaks of liability which may be incurred by the owner of the vehicle in respect of the death or injury on any person or damage to the vehicle. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of section 147 of the Motor Vehicle Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

14.Therefore, the deceased or injured must be either a third party or a person falling within the classification of owner of the goods or the authorised representative of the owner of the goods.

15.Following the Asha Rani case (cited supra), in a case where the injured travelled in a Tractor fitted with Tractor, the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Chinnamma & Others (2004 (8) SCC 697) has held as follows:-

"Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) 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". The "trailer" has been defined in Section 2 (46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle".

A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. This appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs."

16. In the instant case, the deceased is not an employee under the second respondent who is the owner of the Tractor. The Tractor specifically meant for agricultural purposes. In this case, at the time of accident, the Tractor was not used for any agricultural purposes but to transport coconut shells to a brick chamber. In Oriental Insurance Co. Ltd., v. Brij Mohan and others (2007 (2) TN MAC 66 (SC)), when labourers sustained injuries while travelling in a Trolley attached to a Tractor which was engaged to remove earth for a brickyard, for the purpose of manufacturing the bricks, the Hon'ble Supreme Court has held that it is not an agricultural purpose and held that the Tribunal ought not to have fasten the liability on the Insurer. The passengers travelled in the Trolley attached to Tractor being gratuitous passengers, the Insurer can deny liability since, it is a violation of contractual condition.

17. In Oriental Insurance Co. Ltd., v. Pauldurai (2012 (1) TN MAC 545), referring Chinnamma case (cited supra), and other judgments of the Hon'ble Supreme Court on this point, our High Court has held that the victims travelling in the Tractor as a Loadman is only a gratuitous passenger. Therefore, the Insurance Company is not liable to pay the compensation amount.

18. In view of the dictum laid down by the Hon'ble Supreme Court in Chinnamma case (cited supra), in National Insurance Co. Ltd., v. Bommithi Subbhayamma & others (2005 (12) SCC 243) and in New India Assurance Co. Ltd., v. Vedwati and others (2007 (3) SCALE 397), the Hon'ble Supreme Court has clearly reiterated that the liability of the Insurer would be limited to a third party and not to the gratuitous passenger.

19. The learned counsel for the respondents 1 to 4 / claimants relying upon the judgment in Branch Manager, National Insurance Co. Ltd., v. Erappa (2019 (2) TN MAC 161), would submit that when there is evidence on record to show that the deceased travelled in the Tractor as a Loadman and not an unauthorised passenger. When the policy covers the Driver, Coolie and other employees connected with the operation of the vehicle in loading /unloading, the liability to pay compensation cannot be declined by the Insurance Company.

20. This Court on careful reading of the above judgment relied by the learned counsel for the claimants noticed that, in the said judgment, though rendered on 06.06.2019, the judgments of the Hon'ble Supreme Court in Chinnamma case (cited supra) and Brij Mohan case (cited supra) were not considered. Besides, on facts, in the said judgment, there is no material to know 'whether the Tractor was engaged for agricultural purpose' or 'whether the Tractor was permitted to use for activities other than agricultural purpose'. Whereas, in the instant case, the

Tractor being permitted to use only for agricultural purpose had been diverted for the activity other than agricultural purpose. It was driven by a person without driving licence. This fact is unique to the present case in hand clearly indicates that the violation of terms and conditions of the insurance policy. Hence, the Insurance Company cannot be mulcted with responsibility.

21. There is neither contractual liability nor statutory liability for the Insurance Company in the instant case to indemnify the Insured who has violated the policy condition by accommodating the unauthorised passengers in the mud guard of the Tractor.

22. As far as our High Court is concerned, in respect of pay and recovery in case of violation of policy condition, in *United India Assurance Co. Ltd., v Nagammal* (2009(1) TN MAC 1 (FB)), the Full Bench has settled the issue after tracing the march of law starting from *New India Assurance Co. Ltd., v. Satpal Singh* (2000 (1) CTC 370) which was later overruled in *New India Assurance Co. Ltd., v. Asha Rani* (2004 (2) TN MAC 387 (SC)) and observed that, under the Motor Vehicles Act, the Insurance Company was not required to cover the liability in respect of passenger, whether gratuitous or otherwise travelling in a goods vehicle. Under Section 147 of the Act, the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

23. In *The Manager, IFFCO - Tokyo General Insurance Co. Ltd., v. G.Ramesh*, (2012 (1) TN MAC 820) this Court referring the said Full Bench judgment and other judgments, has held as follows:-

".....the question as to whether the Insurance Company is statutorily liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by Hon'ble Apex Court in *Asha Rani's* case by reversing the earlier decision in *Saptal Singh's* case and further question as to whether the doctrine of "Pay and Recover" theory, which is applied till then, by directing the Insurer to satisfy the award and to recover the amount from the insured even though the Insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench judgment of our

High Court. As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the Insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passengers traveling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."

24. In the instant case, the victim having travelled in a mud guard of the Tractor contrary to the policy condition as well as the permit condition, is not covered under the insurance policy. The mud guard of the tractor is not meant for carrying the passenger. Having violated the policy condition, the Insurance Company cannot be mulcted with the responsibility to pay and then recover from the owner of the vehicle.

25. In this case, at the time of admission of this appeal, this Court has directed the appellant Insurance Company to deposit 50% of the award amount along with the interest. Pursuant to the order passed by this Court, the appellant Insurance Company has deposited Rs.5,56,587/-. Thereafter, the claimants have filed an application in C.M.P.No.5296 of 2017 to withdraw the same. In that application, vide order dated 20.04.2017, this Court has directed the claimants to withdraw 50% of their respective shares from the deposit of Rs.5,56,587/-.

26. In the said circumstances, this Court holds that:

(i) The Insurance Company is absolved from liability due to the violation of policy condition;

(ii) The amount withdrawn by the claimants is permitted to be recovered from the sixth respondent herein / vehicle owner by the Insurer / Appellant Insurance Company;

(iii) The respondents 1 to 4 herein who are the claimants shall proceed against the vehicle owner for the balance portion of the award amount and

(iv) The remaining 50% of the amount deposited by the Insurer and lying in M.C.O.P., account is permitted to be withdrawn by the appellant Insurance Company along with the accrued interest.

27. In the result, the Civil Miscellaneous Appeal is allowed and the appellant Insurance Company is exonerated from the liability of paying compensation to the claimants. In respect of quantum and apportionment, the award passed by the Tribunal is

confirmed. The entire liability to pay compensation is fixed on the sixth respondent herein/the owner of the Tractor. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

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To

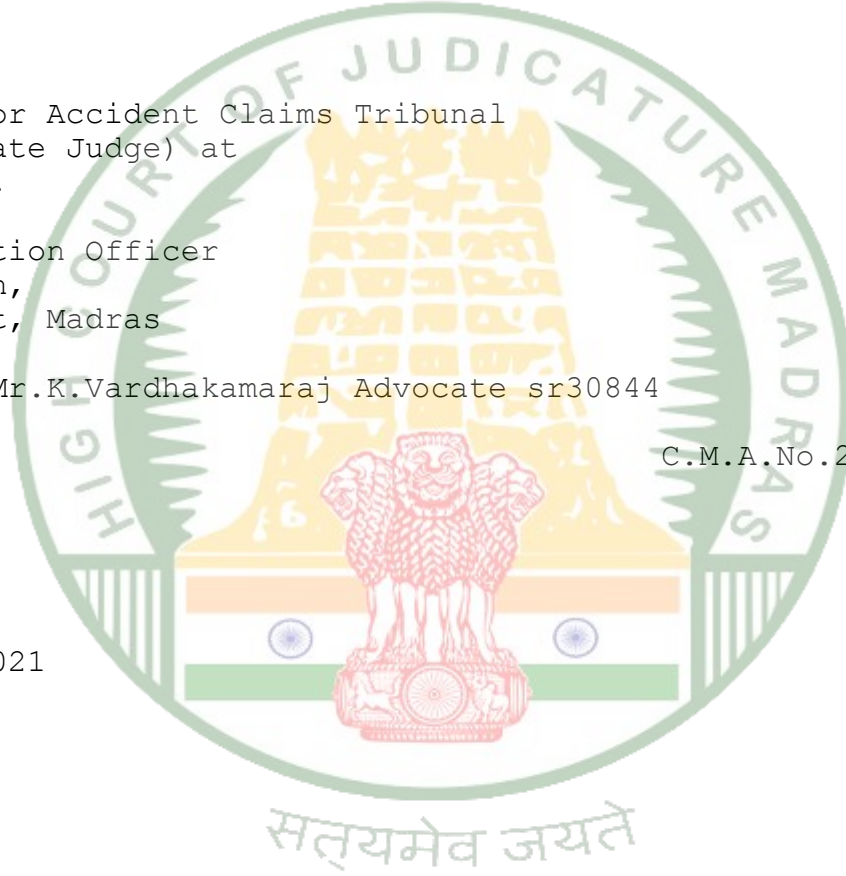
1.The Motor Accident Claims Tribunal
(Subordinate Judge) at
Udumalpet.

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

+1 cc to Mr.K.Vardhakamaraj Advocate sr30844

C.M.A.No.2147 of 2016

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