



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2875 of 2014
and M.P. No.1 of 2014

M/s. New India Assurance Co. Ltd.,
No.39C, Bye Pass Road,
Dharmapuri 636 701.

... Appellant/2nd Respondent

Vs.

1.Madhammal

2.Minor Puvaneswari

3.Minor Sridevi

4.Minor Vijaya Lakshmi

5.Minor Punithavalli

(Minors 2 to 5 respondents are rep. By
their next friend/mother 1st respondent)

6.Kannammal

...Respondents 1 to 6/Petitioners

7.Palani

...7th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2013, made in M.C.O.P. No.760 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Dharmapuri District.

For Appellant : Mr. J. Chandran

For Respondents: No appearance (For R1 to R5)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 28.02.2013, made in M.C.O.P. No.760 of 2010, on the file



of the Principal District & Sessions Court, (Motor Accident Claims Tribunal), Dharmapuri District.

2.The appellant is the 2nd respondent in M.C.O.P. No.760 of 2010, on the file of the Principal District & Sessions Court, (Motor Accident Claims Tribunal), Dharmapuri District. The respondents 1 to 6/claimants filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Velu, who died in the accident that took place on 22.04.2009.

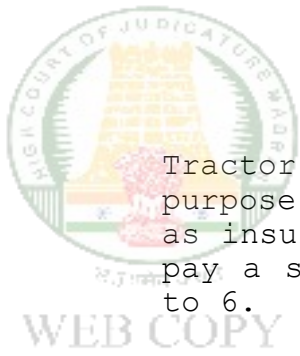
3.According to the respondents 1 to 6, on the date of accident, the deceased was working as a Loadman Coolie in the Tractor bearing Registration No.TN-29-AC-3237 belonging to the 7th respondent. When the said Tractor was proceeding near Natesan field near Ooni, the driver of the Tractor drove the same in a rash and negligent manner and lost his control over the vehicle and capsized by hitting right side stone and caused accident. In the impact, the deceased who was thrown in the road, succumbed to severe injuries and died on the way to Hospital. The accident occurred due to rash and negligent driving by the driver of the Tractor belonging to the 7th respondent and hence, the respondents 1 to 6 filed the claim petition claiming compensation against the appellant as insurer and 7th respondent as owner of the said vehicle.

4.The 7th respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 6 in the claim petition. According to the appellant, the accident occurred only due to negligence on the part the deceased who was sitting by the side of the driver of the Tractor at the time of accident, while seating capacity of the Tractor is only one person i.e., driver, as per Registration Certificate. The deceased traveled as an unauthorized passenger, in violation of policy conditions. Hence, the appellant is not liable to pay compensation. In any event, the respondents 1 to 6 have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye witness as P.W.2 and marked 7 documents as Exs.P1 to P7. The appellant examined its Official as R.W.1 and marked 2 documents as as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to the rash and negligent driving by the driver of the Tractor,



Tractor involved in the accident was used for agricultural purpose along with the goods and hence, directed the appellant as insurer of the said Tractor belonging to the 7th respondent to pay a sum of Rs.7,47,000/- as compensation to the respondents 1 to 6.

8.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 28.02.2013, made in M.C.O.P. No.760 of 2010, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the deceased traveled in the mud card of the Tractor, while seating capacity of the Tractor is only for one person i.e., for driver. The appellant proved the same by examining R.W.1 - its Official and by marking Exs.R1 and R2, R.C. Book and Insurance Policy. Instead of exonerating the appellant, the Tribunal erroneously fastened the liability on the appellant. The award of the Tribunal holding that the deceased traveled along with the goods as a Loadman in the Tractor is contrary to the contents in the FIR. At the time of accident, no Trailer was attached to the Tractor. In the claim petition, the respondents 1 to 6 themselves have mentioned that the deceased was self-employed and they have not stated that the deceased was working under 7th respondent as Loadman. The Tribunal erred in holding that the deceased traveled as Loadman along with goods, without there being any such pleading in the claim petition. The Tribunal ought to have held that the deceased traveled only as unauthorized passenger and dismissed the claim petition against the appellant. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 to 5 and counsel appeared, when the matter was taken up for hearing, there was no representation for them.

11.The 7th respondent remained exparte before the Tribunal and notice to the 7th respondent is dispensed with.

12.Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

13.From the materials available on record, it is seen that the respondents 1 to 6 have stated in the claim petition that the deceased worked as a Loadman Coolie under the 7th respondent's Tractor bearing Registration No. TN-29-AC-3237 and



was earning a sum of Rs.5,000/- per month. On the date of accident, the driver of the Tractor drove the same in a rash and negligent manner and caused accident. In the accident, the deceased sustained injuries and died. To substantiate this contention, the respondents 1 to 6 examined the 1st respondent as P.W.1, one Thandapani as P.W.2 and marked FIR as Ex.P1. On the contrary, the appellant contended that the seating capacity of the Tractor is only one, for the driver and no other person can travel in the Tractor. The deceased traveled along with driver, sitting in the mud card and therefore, the deceased was an unauthorized passenger and hence, appellant is not liable to pay any compensation. To substantiate their contention, the appellant examined R. Sivaprakasam, their Official as R.W.1 and marked copy of R.C. Book and Insurance Policy as Exs.R1 and R2. In the FIR which was registered against the driver of the Tractor, it has been stated that the deceased was sitting along with the driver. Further, P.W.2 deposed that he saw the Tractor coming and deceased was sitting in the Tractor. The driver of the Tractor drove the Tractor in a rash and negligent manner and caused the accident. The deceased was sitting in a Tractor and while claiming a stone, the Tractor got capsized and the deceased fell down in the front side of the Tractor, and sustained injuries. A combined reading of the FIR, Ex.P1 and evidence of P.W.2 clearly shows that the deceased was sitting in the Tractor at the time of accident and he fell down due to rash and negligent driving by the driver of the Tractor and sustained injuries and died on the way to Hospital. The Tribunal considering the evidence of P.W.1, P.W.2 and FIR, held that the accident has occurred due to rash and negligent driving by the driver of the Tractor belonging to the 7th respondent. The Tribunal directed the appellant to pay a sum of Rs.7,47,000/- as compensation to the respondents 1 to 6 on behalf of the 7th respondent, as the Tractor was insured with the appellant at the time of accident.

14.It is well settled that in the Tractor, except driver, no person can travel. Anybody traveling in the Tractor apart from driver is only an unauthorized passenger. It is not the case of the respondents 1 to 6 that the Trailer was attached and the deceased traveled in the Trailer. From the averments in the claim petition, it is seen that the respondents 1 to 6 have stated that the deceased was self-employed in column no. 5 of the claim petition and in column no.23, they have stated that the deceased was working as a Loadman Coolie under the 7th respondent. The Tribunal without there being any materials, erroneously held that the deceased traveled along with the goods and appellant as insurer is liable to pay compensation. In view of the fact that the deceased traveled in the Tractor and he was unauthorized passenger, the appellant is not liable to pay any



compensation to the respondents 1 to 6. Therefore, the award of the Tribunal fastening liability on the appellant is liable to be set aside and is hereby set aside. The compensation awarded by the Tribunal is confirmed and the 7th respondent alone is liable to pay the said compensation to the respondents 1 to 6.

15. In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.7,47,000/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 7th respondent is directed to deposit the award amount along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.760 of 2010. On such deposit, the respondents 1 and 6 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 to 5 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 to 5 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 5. The appellant-Insurance Company is permitted to withdraw the amount, lying in the credit of M.C.O.P. No.760 of 2010, if the award amount has already been deposited by them. It is made clear that if the respondents 1 to 6/claimants have already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 to 6/claimants. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsa

To

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



Copy to

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

+1cc to Mr.J.Chandran, Advocate Sr.40175
+1cc to Mr.N.Chinnaraj, Advocate Sr.39989

C.M.A. No.2875 of 2014

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