

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4796 of 2019

and

C.M.P.No.27893 of 2019

The Manager

HDFC ERGO General Insurance Company Ltd.,

3rd party cell,

Old No.559, New No.528, Anna Salai,

Teynampet,

Chennai-600 018.Appellant/ 2nd Respondent

Vs.

1.Kannamma

2.Usha

...1st and 2nd Respondents/Petitioner

3.Sivakumar

...3rd Respondent/ 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2019 made in M.C.O.P.No.68 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, Tiruvallur.

For Appellant :Mr.N.Somasundar

For R1 & R2 : Mr.K.Varadhakamaraj

R3 : Exparte before Tribunal

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J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant-Insurance Company challenging the award dated 31.07.2019 made in M.C.O.P.No.68 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, Tiruvallur.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.68 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, Tiruvallur. The respondents 1 & 2 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their mother Kowsalya who died in the accident that took place on 22.04.2017.

3.According to the respondents 1 and 2, on 22.04.2017 at about 1.15 p.m while the deceased kowsalya was returning home in the Tractor on Nagari-Nagalapuram Road, in front of Prodential Sugar Factory, near Nindra cross road, the driver of the Tractor drove the same in a rash and negligent manner, at a high speed and dashed against the speed breaker and caused the accident. In the accident, the said kowsalya sustained grievous injuries and she was taken to Government Hospital, Puthur, Andra Pradesh. Inspite of treatment, the said kowsalya succumbed to injuries on the same day. At the time of accident, the deceased was aged about 51 years and was doing Agricultural work and earning a sum of Rs.500/- per day. Therefore, the respondents 1 and 2 being the daughters of the deceased filed the claim petition claiming a sum of Rs.15,00,000/- as compensation against the 3rd respondent and appellant-Insurance Company, being the owner and insurer of the Tractor respectively.

4.The 3rd respondent, owner of the Tractor remained ex-parte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the Tractor belonging to the 3rd respondent filed counter statement and denied various averments made by the respondents 1 and 2. According to the appellant-Insurance Company, the accident has not occurred as alleged by the respondents 1 and 2. According to the appellant-Insurance Company the deceased has travelled in the Tractor as an unauthorized passenger and only due to her negligent act, she sustained fatal injuries and died. The respondents 1 and 2 have to prove that the accident has occurred only due to rash and negligent driving by the driver of the Tractor belonging to the 3rd respondent. The 3rd respondent's Tractor was not insured with the appellant-Insurance Company and there was no valid insurance policy at the time of accident and also the driver of the Tractor was not possessing valid driving licence and badge endorsement at the time of accident. There is no valid permit and fitness certificate to the 3rd respondent's Tractor. The fitness certificate expired on 16.07.2016 and hence, the appellant-Insurance Company is not liable to indemnify the 3rd respondent and pay compensation to the respondents 1 and 2. The respondents 1 and 2 have to prove that they are the legal heirs of the deceased by producing valid

documents. The respondents 1 and 2 are married daughters of the deceased Kowsalya and hence, they are not the dependants of the deceased. The respondents 1 and 2 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined herself as P.W.1 and one Prasanth, who is the eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the appellant-Insurance Company, one Kishore Kumar, Junior Assistant of RTO, Thirupathy was examined as R.W.1 and one Arunachalam, Legal Manager of the appellant-Insurance Company was examined as R.W.2 and 8 documents were marked as Exs.R1 to R8.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tractor belonging to the 3rd respondent and directed the appellant-Insurance Company, being the insurer of the Tractor to pay a sum of Rs.8,72,000/- as compensation to the respondents 1 and 2 at the first instance and recover the same from the 3rd respondent, owner of the Tractor.

8. Against the said award dated 31.07.2019 made in M.C.O.P.No.68 of 2017, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the deceased travelled in the tractor as unauthorized passenger. As per the Registration Certificate, the seating capacity is 'one' and that is meant only for the driver of the tractor. As per Rule 28 of the Rules of the Road Regulations, 1989, the driver of the tractor while driving the tractor cannot carry any passenger. At the time of accident five persons including driver travelled in the tractor. The appellant has taken specific plea that deceased travelled as an unauthorized passenger and hence, the appellant is not liable to pay any compensation. The Insurance policy issued by the appellant also did not cover the liability of the deceased. The Tribunal failed to adjudicate the issue of liability in proper perspective when the appellant is not liable to pay compensation and the Tribunal erred in ordering pay and recovery. The learned counsel for the appellant further contended that as per Regulation 28 of Rules of the Road Regulation Act, 1989, the driver of the tractor

shall not carry any person in the tractor and therefore the 3rd respondent-owner of the tractor has violated the terms and conditions of the policy and appellant is not liable to pay any compensation. In support of his contention, the learned counsel for the appellant relied on the following judgments:

(i) The judgment of this Court reported in 2018(2)TN MAC 731 (DB) (Bharathi AXA General Insurance Co. Ltd., vs. Aandi, 2.Rajendran, 3.Saravanan), wherein at paragraph No.33, the Division Bench of this Court held as follows:

"33.Thus, the law came to be settled to the effect that the Insurance Company is not bound to indemnify the insured for the Loss or injury caused to a person, who had travelled as a passenger in a Goods Vehicle."

(ii) The judgment of the Hon'ble Apex Court reported in 2007(1)TN MAC 205 (SC) (New India Assurance Co. Ltd., Vs. Vedwati & Others), wherein at paragraph No.13 the Hon'ble Apex Court held as follows:

"13.The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

(iii) The judgment of this Court reported in 2009(2)TN MAC 20 (A.Raja Mohammad Vs. Minnalkodi and Others), wherein at paragraph No.16 this Court held as follows:

"16. The Pertinent question that arises in this case is whether the insurance company is liable to pay compensation to the dependents of the deceased in terms of the insurance policy. Admittedly, at the time of accident, the tractor alone stood insured with the appellant in C.M.A. No.948/2002 and the trailer was not insured with either the said appellant or any other insurance company. Only subsequent to the date of accident an additional premium was paid for the insurance coverage of the trailer and an endorsement was obtained on 17.02.1992. A copy of the endorsement has been produced and marked as Ex.R.2. From the original policy marked as Ex.R1 it is obvious that there was no insurance of the risk of any passengers

carried in the vehicle. In fact definition of "tractor" found in Section 2(44) of the Motor Vehicles Act, 1988 will show that it is a motor vehicle which is not itself constructed to carry any load other than equipments used for the purpose of propulsion. When the said definition is strictly construed, one can easily arrive at a conclusion that no goods or passenger can be carried in the tractor. The deceased, according to the claimants, travelled in the tractor along with his agricultural produce, namely paddy bags. By making such a plea, the claimants have made an attempt to show that the deceased was travelling in the vehicle along with his goods as the owner of the goods. Such an attempt seems to have been made to show that the deceased was travelling in the vehicle as the owner of the goods transported therein. But since they were advised that they could not claim compensation from the insurance company with which the tractor alone stood insured, the claimants seem to have taken a stand that the deceased was travelling in the tractor and not in the trailer at the time of accident. As pointed out supra, the claimants have also made a conscious attempt to suppress the particulars of the trailer by ingeniously drafting the petition in which the registration number of the tractor alone was furnished. There is not even a whisper that the tractor was fitted with a trailer. The same seems to have been done with a purpose as the claimants should have been advised that they could not claim compensation from the insurer unless they take a stand that the deceased was travelling in the tractor and not the trailer."

(iv) The judgment of the Madurai Bench of this Court reported in 2012(1)TN MAC 545 (Oriental Insurance Co. Ltd., Vs. Pauldurai, 2.Mohammed Esbhakhan, 3.Ramar, 4.Periyakaliappan), wherein at paragraphs No.6 & 7 the Madurai Bench of this Court held as follows:

"6. The only question that arises in this Appeal for consideration is as to whether the Insurance Company is liable to pay the compensation to the Respondent/Claimant, who had travelled in the Tractor. The unreported judgment of the Honourable Supreme Court relied upon by the learned counsel for the Appellant in Oriental Insurance Co. Ltd. Vs. Natthi Bai and Others, SLP (C) No.3900/2006 gives a fitting answer to the issue involved in this Appeal. In the unreported judgment of the Honourable Supreme Court relied upon by the learned Counsel for the Appellant, I find that the Honourable Supreme Court has set aside the judgment of the High Court awarding compensation to the passenger travelled in the Tractor by observing as follows:

"Question in regard to liability of the Insurance Company, vis-à-vis, the passenger travelling in a Tractor which is not used for agriculture purpose came up for consideration before this Court in National Insurance Co. Ltd. Vs, Chinnamma & others, 2004(8) SCC 697, where in it was categorically held as under:

14. An insurance for an owner of the goods or his authorised representative travelling in a vehicle became compulsory only with effect from 14.11.1994 i.e., from the date of coming into force on Amending Act 54 of 1994.

The said legal principle is reiterated in relation to gratuitous passenger in National Insurance Co. Ltd., V.Bommithi Subbhayamma & Ors., 2005(12)SCC 243. Yet again in New India Assurance Co. Ltd. V. Vedwati & Ors., 2007(3) SCALE 397, a Division Bench of this Court has clearly held that the liability of the Insurer would be limited to a third party and not to a gratuitous passenger.

Mr.Prakash Shrivastava, learned counsel appearing for the Respondent, however, submits that the Insurance Policy would show that one passenger could travel in a Tractor. The passenger referred to in the Insurance Cover evidently would mean the driver of the

Tractor and not any passenger who can travel on the mudguard of the Tractor. There would not be any seat for a passenger on the Tractor, which was to be used for agricultural purpose.''

7. The above decision of the Honourable Supreme Court squarely applicable to the facts of this case. Even in this case, I find that the Respondent/Claimant had travelled only as a gratuitous passenger in the Tractor. Therefore, the Insurance Company is not liable to pay the compensation amount. In view of the dictum laid down by the Honourable Supreme Court that the gratuitous passenger travelling in the Tractor is not entitled for compensation, I am not inclined to rely upon the judgments produced by the learned counsel for the Respondent that the Insurance Company has to be directed to pay the amount and permitted to recover the same from the owner of the vehicle. In view of the above finding, the Insurance Company is exonerated from its liability in paying the compensation amount.''

(v) The judgment of the Hon'ble Apex Court reported in 2004 (2) TN MAC 123 (SC) (National Insurance Co. Ltd., V. Chinnamma & Others.), wherein at paragraph No.13 the Hon'ble Apex Court held as follows:

"13. 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".

(vi) The judgment of the High Court of Karnataka reported in 2013 (1) TN MAC 615: (Kar)2015 ACJ 680 , wherein at paragraph No.15 the High Court of Karnataka held as follows:

"15.The Judgment in MFA.No.10139/2006 disposed of on 11/11/2011 (National Insurance Co. Ltd. V/s. Smt. Bhadravva & another) would not be applicable to the case at hand since the first respondent has admitted not only in his pleadings, but also in the documentary evidence which has been produced by him that he was sitting on the tractor. Therefore, it was not necessary to further elicit in his cross-examination that he was sitting on the tractor. At this stage, it cannot be contended that he was not sitting on the tractor and that he fell down from the trailer. The W.C. Commissioner was, therefore, not right in fastening the liability on the insurance company in the face of the evidence being contrary. There is a violation of Regulation 28 of the Motor Vehicles Rules, which states that " a driver when driving a tractor shall not carry or allow any person to be carried on tractor." Therefore, the W.C. Commissioner's order requires interference as the substantial questions of law raised herein have to be answered in favour of the insurance company. The commissioner was not justified in saddling the liability on the appellant as the first respondent was travelling on the tractor and his risk was not covered under the terms of the policy.'"

10.Per contra, the learned counsel appearing for the respondents 1 & 2 contended that the deceased has not travelled as gratuitous passenger. The respondents 1 & 2 have let in evidence to prove that accident occurred while deceased and others were returning after finishing their agriculture work and the FIR was registered only against the driver of the tractor. P.W.2 eyewitness clearly deposed that accident occurred only due to rash and negligent driving by driver of the tractor. The Insurance policy issued by the appellant was in force at the time of accident. The award of the Tribunal ordering pay and recovery is valid. The learned counsel appearing for the respondents 1 & 2 further contended that the appellant has issued Ex.R8/insurance policy only for the tractor and there cannot be any policy for both tractor and trailer together. The appellant has collected premium of Rs.682/- for IMT 34 which covers for passengers who travel in the tractor apart from the

driver. The learned counsel for the respondents 1 and 2 further contended that the appellant had received the additional premium to cover the liability of others, apart from driver and the insurance policy is a contractual policy apart from statutory policy. The appellant is bound by terms of contract and is liable to pay compensation to the respondents 1 & 2. In support of his contention, the learned counsel appearing for the respondents 1 & 2 relied on the following judgments:

(i) The judgment of the Hon'ble Apex Court reported in 2017 (1) TN MAC 746 (SC) (Mata Ram Vs. National Insurance Co. Ltd., and others), wherein at paragraph No.9 the Hon'ble Apex Court held as follows:

"9. After carefully perusing the records of the case and having regard to the fact that the Insurance Policy clearly shows that the Insurance Company has charged a premium from the insured for three persons excluding the Driver, we are of the opinion that the Insurance Company cannot be absolved from its liability on the death of a person."

(ii) The judgment of the Hon'ble Apex Court reported in 2009 (1) TN MAC 55 (SC) (New India Assurance Company Ltd. Vs. Sadanand Mukhi and others), wherein at paragraph No.13 and 15 the Hon'ble Apex Court held as follows:

"13. The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas the Insurance Company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property."

15. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle the question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent

of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils its statutory obligation as contained in Section 147 of the Act. The liability of the Insurer is either statutory or contractual. If it is contractual its liability extends to risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an

interpretation the Insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the Court, unless a statute is found to be unconstitutional. To consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.''

11. The learned counsel appearing for the appellant-Insurance Company in reply contended that the policy issued by the appellant marked as Ex.R8 is the policy issued for both tractor and trailer. In the policy, Registration Numbers of both tractor and trailer were mentioned. The appellant has received separate premium for Tractor covering 3rd party liability premium to PA cover for Owner driver of 2,00,000/LL to paid Driver/Conductor/Cleaner (IMT-28). The premium received for IMT 34 is only for the persons who travel in the Trailer. The learned counsel for the appellant has referred to clause 26 of policy, wherein it has been mentioned that additional premium received shall apply in respect of trailer noted in the schedule of tractor and prayed for allowing the appeal.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

13. It is the contention of the respondents 1 and 2 that the deceased was an Agricultural Coolie, and after agricultural work, she was returning home in the tractor and trailer belonging to 3rd respondent. It is admitted by the respondents 1 and 2 in the claim petition that the deceased has travelled in the tractor. In the proof affidavit, the 1st respondent as P.W.1 has stated that her mother deceased Kowsalya travelled along with 3 other persons sitting near the driver of the tractor and due to rash and negligent driving by driver of the tractor, the said Kowsalya fell down and sustained fatal injury. In cross examination, she had admitted that deceased travelled in the tractor. As per the permit condition, the permitted seating capacity is 'one' which is meant for the driver alone. Under Sections 2(14), 2(44) and 2(46) of Motor Vehicles Act defines Goods Carriage, Tractor and Trailer respectively. The said definitions are extracted hereunder for better appreciation:

"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.'"

14. As per definition, goods carriage defines a motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not so constructed or adopted when used for the carriage of goods. The definition of tractor shows that the same is not constructed to carry any load. The definition of trailer shows that any vehicle drawn or intended to be drawn by the motor vehicle. The definition of both tractor and trailer makes very clear that both tractor and trailer are not intended to carry any passengers. When more persons other than driver travelled in the tractor are unauthorized passengers. The judgements relied on by the learned counsel for the appellant, clearly proves that the persons who travelled in the tractor sitting in the mudguard or engine or inside the tractor are only unauthorized passengers. In addition to the above contention that the passengers other than driver are unauthorized persons, the learned counsel appearing for the appellant also relied on Regulation 28 of Rules of Road Regulation, wherein it has been stated that the driver of the tractor shall not carry any person on the tractor. This issue

came up for consideration before the High Court of Karnataka in the judgment reported in 2013 (1) TN MAC 615 : (Kar) 2015 ACJ 680 = CDJ 2013 Kar HC 167. The Karnataka High Court held that there is violation of Regulation 28 of the Motor Vehicles Rules, referred above, when the driver driving the tractor carry or allow any person to be carried on the tractor. The Karnataka High Court considering the facts that when the persons travel in the tractor and fell down and got injured, held that the Insurance Company is not liable to pay compensation. As far as the contention of the respondents 1 and 2 that both tractor and trailer cannot be insured by a single policy is contrary to Ex.R8/Insurance Policy. The learned counsel appearing for the respondents 1 & 2 has not referred to any provision which prohibits insuring both tractor and trailer by a single Insurance policy. A reading of Ex.R8/Insurance Policy would show that both tractor and trailer were insured by the said policy. Chassis Number, Engine Number and model of the tractor have been mentioned in the policy. In addition to the same, the 3rd respondent has paid premium separately for tractor and trailer. The contention of the learned counsel appearing for respondents 1 and 2 that appellant has received premium under IMT 34 covering others which means that the persons travelling in the tractor are covered by policy and appellant is liable to pay compensation for the said passengers is contrary to the terms of insurance policy which was marked as Ex.R8. The learned counsel appearing for the appellant rightly contended that premium received under IMT 34 relates only to the trailer. The contention of learned counsel appearing for the respondents 1 and 2 that clause 26 of the policy mentioned that additional premium IMT 34 relates to the tractor is without merits. In the judgement relied on by the learned counsel for the appellant it has been consistently held that persons travelling in the tractor are only unauthorized passengers and Insurance Company is not liable to pay compensation to the said unauthorized passengers. In view of the same, the ratio of the judgements relied on by the learned counsel for the appellant are squarely applicable to the facts of the present case and the judgements relied on by the learned counsel for the respondents 1 and 2 do not advance the case of the respondents 1 and 2.

15. In the result, the Civil Miscellaneous Appeal is allowed setting aside the portion of the award directing the appellant to pay the compensation at the first instance and recover the same from the 3rd respondent. The 3rd respondent is directed to deposit a sum of Rs.8,72,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.68 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, Tiruvallur, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the

respondents 1 and 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount, if any lying in the credit of M.C.O.P.No.68 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, Tiruvallur, if the entire award amount has been already deposited by them. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Special District Judge No.I
Motor Accidents Claims Tribunal,
Tiruvallur.
- 2.The Section Officer, V.R.Section,
High Court, Chennai.

1 cc to Mr.N. Somasundarar, Advocate, Sr. 15524

2 ccs to Mr. K. Varadha Kamaraj, Advocate, Sr. 151712

C.M.A.No.4796 of 2019

and

C.M.P.No.27893 of 2019

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