IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA NO.16 OF 2015
AND
MP NO.1 OF 2015

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
No.46, Katpadi Street,
Vellore.

... Appellant/Respondent II

Versus

1. Rani
2. Minor Shrimathi

...Respondents 1 & 2/Petitioners 1 & 2

3. Minor Surya
4. Minor Jeevitha
5. Koneri
6. Lakshmi

...Respondents III, IV, V & VI/
Petitioners III, IV, V & VI

7. Tamilselvan

...Respondent VII/Respondent I

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in M.C.O.P. No.889 of 2013 on 24.06.2014 on the file of the learned Motor Accident Claims Tribunal (Special Sub Judge) at Tiruvannamalai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.B.Jawahar for R1 to R6
R7 – No appearance

JUDGMENT

(Heard Video Conference)

This appeal has been filed by the Insurance Company challenging the impugned award dated 24.06.2014 passed by the Motor Accidents Claims Tribunal, (Special Sub Judge) at Tiruvannamalai in MCOP No.889 of 2013.

2. The respondents Nos.1 to 6 are the claimants before the Motor Accident Claims Tribunal. They preferred a claim seeking compensation for the death of Srinivasan as a result of an accident on 14.04.2012 alleged to have been caused by a Tractor bearing registration No.TN-25-Q-9848, owned by the 7th respondent and insured with the appellant.

3. The Tribunal under the impugned award directed the appellant/ Insurance Company to pay a total compensation of Rs.8,58,000/- together with interest and costs to the respondents / claimants, but however granted pay and recovery rights to the appellant / Insurance Company by permitting them to recover the said amount from the owner of the Tractor viz., the 7th respondent herein.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency (Rs.3375 x 12 x 16)	6,48,000
Loss of love and affection (6 x 15000)	90,000
Consortium to the first petitioner	25,000
Loss of guidance to the second to fourth minor petitioners / children (Rs.25,000/- x 3)	75,000
Funeral expenses	20,000

Heads	Amount awarded by the Tribunal (Rs.)
Total	8,58,000

5. Aggrieved by the finding of the Tribunal holding the appellant / Insurance Company liable to pay the compensation, the appellant preferred this appeal.

6. Heard Mr. J. Chandran, learned counsel for the appellant / Insurance Company and Mr.B.Jawahar, learned counsel for the respondents 1 to 6. Despite service of notice on the 7th respondent, there is no representation on his side.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. The main contention of the appellant / Insurance Company is that there is no insurance coverage under the policy issued to the 7th respondent for a traveller in the mudguard of the Tractor and hence, they will have to be exonerated of any liability. According to them, the Tribunal ought not to have directed the appellant / Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle on pay and recovery basis.

9. However, the case of the claimants as seen from the claim petition is that on 14.04.2012 at about 5.30 p.m., when the Tractor was proceeding to Kungiliyanatham village, the deceased Srinivasan stopped the Tractor and attempted to board it and due to the rash and negligent driving by the Driver of the Tractor, he fell down sustaining injuries which resulted in his death. According to the respondents/claimants, the deceased was a third party and hence, entitled to claim compensation from the appellant / Insurance Company.

10. Before the Tribunal, the respondents / claimants filed four documents, which were marked as Exs.P1 to P4 and two witnesses were examined on their side viz., the wife of the deceased, Rani as PW1 and an eye witness to the accident Sekar as PW2. On the side of the appellant / Insurance Company three documents were marked viz., Xerox copy of the Learner's

licence as Ex.R1, xerox copy of the Driving Licence and Master Register as Ex.R2 and a copy of the insurance policy as Ex.R3 and two witnesses were examined viz., R.T.O. official as RW1 and official of the appellant / Insurance company as RW2.

11. A counter has also been filed by the appellant / Insurance Company before the Tribunal denying their liability to pay the compensation.

12. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the pleadings in the claim petition as well as the insurance policy, which has been marked as Ex.R3 before the Tribunal. He would submit that the deceased was not a third party as per their own admission and the claimants have pleaded that the deceased stopped the insured Tractor bearing Registration No.TN-25-Q-9848 and boarded the said Tractor on his own. He also drew the attention of this Court to the Insurance Policy (Ex. R3) and would submit that the coverage has been given by the appellant only to a specified person viz., the owner of the vehicle and further the coverage is only for one person and not for any gratuitous passenger as in the case of the deceased. He would submit that as per the settled law, the Tribunal Company ought to have exonerated the appellant / Insurance Company from any liability, since the deceased was not a third party. He drew the attention of this Court to the following authorities, in support of his submissions:

1) Oriental Insurance Co. Ltd., versus Pauldurai and others reported in 2012 (1) TN MAC 545

2) Manager, HDFC Ergo General Insurance Co. Ltd., versus Kannamma and others reported in 2020 (2) TN MAC 263

3) New India Assurance Co. Ltd., vs. Murgammal and others reported in 2020 (2) TNMAC 503

13. Per contra, the learned counsel for the respondents / claimants would submit that the claimants are entitled for compensation from the appellant / Insurance Company and he would submit that the Tribunal has rightly granted pay and recovery rights to the appellant / Insurance Company under the impugned

award. He drew the attention of this Court to the following authorities in support of his submissions:

1) United India Insurance Company Ltd., vs. Rani and others in CMA No.16 of 2016.
2) United India Insurance Company Ltd., vs. Polaki Sarojini Devi and others reported in 2005 ACJ 1223
3) Ganga Ram and another versus Mahip Narain Singh and others reported in 2005 ACJ 1225
4) Shantha and two others vs. United India Insurance Co. Ltd., and another rendered om 08.01.2020 in MFA No.20007 of 2013.

14. Relying upon the aforesaid decisions, the learned counsel for the respondents / claimants would submit that the deceased only attempted to board the Tractor and the accident having happened only due to the rash and negligent driving by the Driver of the Tractor, the appellant is liable. According to him, if the aforesaid decisions are applied, the deceased is a third party and therefore, the claimants are entitled to get compensation from the appellant / Insurance Company.

15. There is no dispute about the fact that the insurance coverage has been given by the appellant / Insurance Company under the insurance policy (Ex.R3) only for one person and further, there is also no dispute that the Tractor can carry only one person viz., its Driver. Here is a case where even according to the respondents / claimants, the deceased stopped the Tractor which was proceeding to another village and while attempting to board the Tractor due to the rash and negligent driving by the Driver, the deceased was thrown out of the Tractor which resulted in his death.

16. This is not a case, where the Tractor has dashed against the deceased in which case, the claimants case is believable. Voluntarily, the deceased has boarded the Tractor and therefore, this Court is of the considered view that he cannot be treated as a third party to enable the claimants to get a compensation from the Insurance Company.

17. The decisions relied upon by the learned counsel for the respondents / claimants all pertain to buses and one of the

decisions pertain to a goods vehicle. None of them involve a Tractor, which is the vehicle involved in the case on hand. Buses and goods vehicle can carry more number of persons. But in the case on hand admittedly, the Tractor can carry only one person i.e., the Driver. Even according to the respondents / claimants, the deceased attempted to board the Tractor and he also stopped the Tractor for the purpose of boarding the same. The Tractor is meant either for agricultural purposes or for carrying goods with the help of a Trailer. The deceased certainly would have known that if he boards the Tractor and travels along with the Driver, he will be treated as an unauthorised passenger as a Tractor is not permitted to carry any other person apart from the Driver. The facts and circumstances of the decisions relied upon by the learned counsel for the respondents / claimants referred to supra are different from the facts and circumstances of the instant case. There is also no dispute that under the insurance policy issued by the appellant / Insurance Company, the coverage is only for one person that too the named person in the policy. It is not a case of the Tractor dashing against the deceased which resulted in his death. It is the case where the deceased himself has volunteered to board the Tractor and was thrown out of the Tractor. Therefore, from the pleadings as well as the evidence available on record, it is clear that the deceased was only a gratuitous passenger in the Tractor which has been insured with the appellant / Insurance Company. The Tribunal under the impugned award has mis-appreciated the evidence available on record and has mis-directed itself by holding that the appellant / Insurance Company is liable to pay the compensation and thereafter recover the same from the owner of the Tractor. When the pleadings as well as the evidence available on record and the insurance policy which has been marked as Ex.R3 before the Tribunal would clearly indicate that the respondents/ claimants are not entitled for compensation from the appellant / Insurance Company, the Tribunal ought to have dismissed the claim as against the appellant / Insurance Company but has erroneously passed an award holding the appellant /Insurance Company liable to pay the compensation and thereafter recover the same from the owner of the vehicle.

18. The decisions relied on by the learned counsel for the appellant / Insurance Company referred to supra is squarely applicable for the facts of the instant case. In those

cases also, in identical circumstances, this Court exonerated the liability of the insurance company.

19. For the aforesaid reasons, the impugned award dated 24.06.2014 passed by the Tribunal in M.C.O.P. No.889 of 2013 is hereby set aside as against the appellant / Insurance Company and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed. Insofar as the award passed by the Tribunal as against the 7th respondent is concerned, the same is confirmed by this Court.

20. The Tribunal is directed to return the amount if any deposited by the appellant / Insurance Company on filing of an appropriate application.

Sd/-
Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar

vsi2

To

1. The Special Sub Judge
   at Tiruvannamalai.

2. The Section Officer,
   V.R. Section
   High Court of Madras, Chennai - 104.

+1cc to Mr.B.Jawahar, Advocate, S.R.No.29882

+1cc to Mr.J.Chandran, Advocate, S.R.No.29551

CMA No.16 of 2015

MG(CO)
RLP(08/11/2021)