

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
11.03.2021

Date of Pronouncing Judgment
24.03.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2734 of 2015

The Branch Manager,
The Oriental Insurance Co. Ltd.,
81-C, First Floor, K.R.C. Complex,
Chennai Salai,
Krishnagiri - 635 001.

... Appellant /2nd Respondent

Vs.

1.Vasantha
2.Jayaprakash
3.Muniammal

... 1 to 3 Respondents/Petitioners

4.M. Ramakrishnan

... 4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.259 of 2013 on the file of the Motor Accident Claims Tribunal (District Judge Special District Court for Motor Accident Claims Cases) at Krishnagiri dated 25.09.2014.

For Appellant : Mr. M.Krishnamoorthy

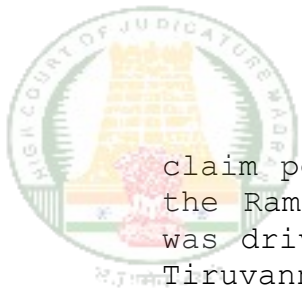
For Respondents : Mr. Mukund R.Pandiyar, for R1 to R3

R4 : Exparte

J U D G M E N T

This appeal has been filed by the appellant / Insurance Company challenging the award on the ground of liability and quantum.

2. The respondents 1 to 3 herein are the legal heirs of the deceased, who drove the lorry owned by the first respondent insured with the second respondent. The respondents 1 to 3 herein filed the claim petition under Section 167 of the Motor Vehicles Act, on the ground that the husband of the first



claim petitioner was employed as a driver in the lorry owned by the Ramakrishnan, the fourth respondent herein and the deceased was driving the lorry Registration No.TN 24 T 2364 in Chengam to Tiruvannamalai main road. At that time the lorry came from opposite direction in a rash and negligent manner just about to hit the lorry driven by the deceased. To avoid the accident the deceased turned his lorry to left side and he lost control and hit on the road side tamarind tree and caused the accident.

3. In support thereof, the cleaner of the vehicle was examined as P.W.1, he would depose that in order to avoid the vehicle coming from opposite direction, the driver of the lorry namely the deceased-Murugan turned the lorry to the left hand side and hit against the tamarind tree and consequently he died on the spot.

4. On behalf of the Insurance Company, R.W.1 was examined and based upon the records, a case was projected by the Insurance Company before the claim Tribunal that the deceased Murugan was the lorry driver who drove the vehicle on the fateful day, he died when the lorry hit against the tamarind tree on the road side. The police registered the FIR against the lorry driver Murugan namely the deceased herein. Non-involvement of any other vehicle is not in dispute and hence, the Insurance Company has sought for exoneration of the liability.

5. On perusal of Ex.P1 FIR lodged by the load man, who was in the lorry at the time of the accident goes to show that the deceased died while he was on duty as a lorry driver. As per the admission made by R.W.1, the owner of the lorry had paid premium covering the risk of the driver of the lorry.

6. The learned counsel for the appellant would rely upon the decision reported in 2020 (1) TN MAC 1 (SC) (Ramkhiladi and another Vs. United India Insurance Company Limited and another) wherein it is held that Insurance Company cannot be held liable since, the deceased himself is a tort-feasor and the vehicle was driven by him and that there is no other vehicle involved. Further, he would submit that as per Insurance Policy there is no personal accident coverage.

7. Heard, Mr. Mukund R. Pandian, learned counsel for the respondents 1 to 3 would contend that additional premium was paid to the driver and hence, the Insurance Company is liable to pay the entire compensation and made a submission in support of the award passed by the Tribunal.



8. Taking note of the fact that the accident had taken place due to the rash and negligent driving of the driver namely the deceased Murugan and hence, I find that the deceased, who drove the lorry, is a wrongdoer and the deceased being the tort-feasor, he cannot maintain claim petition against the Insurance Company of the vehicle.

9. The recent judgment of Hon'ble Supreme Court in the case of Ramkhiladi and another v. United India Insurance Co. Ltd., and another 2020 (1) TN MAC 1 (SC) : 2020 (1) CTC 443 (SC), elaborately discussed the scope of claim petition under Section 163-A of the Motor Vehicles Act. Undoubtedly, the Special provision cannot be read in isolation and the Apex Court considered Sections 147, 166 & 163-A of the Motor Vehicles Act. Thus, the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.

10. In the case before the Hon'ble Supreme Court, the finding was that the parties are governed by the Contract of Insurance and under the Contract of Insurance, the liability of the Insurance Company would be qua Third party only. Thus the deceased cannot be said to be a Third party with respect to the insured vehicle. There cannot be any dispute that the liability of the Insurance Company would be as per the terms and conditions of the Contract of Insurance. The Insurance Policy covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a Third party caused by or arising out of the use of the vehicle. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

11. In the decision reported in (2020) 1 TN MAC 646, my learned brother Justice S.M. Subramaniam has held as follows:

"It is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163-A of the Act."

12. On perusal of Ex.R1-Insurance Policy, it is seen that it was insured for the driver of the vehicle and additional premium was also paid. As stated supra, the case of the injured/P.W.1 is that while the deceased was driving the lorry, another lorry, which came from opposite direction, was driven



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15. As per Section 4 of the Employee's Compensation Act, as the claim petitioner died due to the injuries, 50% of the salary drawn by him, he is entitled for 50 per cent of the monthly wages of the deceased (employee) multiplied by the relevant factor:

$$50/100 \times 17,06,040 = 8,53,020/-$$

16. Funeral Expenses:

The Tribunal has awarded a sum of Rs.20,000/- towards funeral expenses and the same is reduced to Rs.5,000/-.

17. Since this Court has awarded compensation under Workmen's Compensation Act, the interest will be 12% from the date of accident. Accordingly, C.M.A.No.2734 of 2015 is partly allowed to the extent indicated above and the award of compensation from 12,10,000/- stand reduced to Rs.8,58,020/-.

18. The appellant / Oriental Insurance Company Limited is directed to deposit the modified award amount of Rs.8,58,020/- along with the interest, within a period of four weeks, from the date of receipt of copy of the judgment and on such deposit, the respondents 1 to 3 are permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 25.09.2014, passed in M.A.C.T.O.P.No.259/2013, stands modified and C.M.A.No.2734/2015 stands allowed in part. No costs.

Sd/-

Assistant Registrar(R)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
District Judge Special District Court for
Motor Accident Claims Cases, Krishnagiri

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.19391

C.M.A.No.2734 of 2015

CP(CO)
GN(25/11/2021)