IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2021
PRONOUNCED ON :29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1442 of 2020
and
C.M.P.No.10597 of 2020

New India Assurance Company Limited,
T.P.Cell No.232, Bombay Mutual Building,
6th Floor, N.S.C Bose Road, Parrys,
Chennai – 600 001

... Appellant/2nd Respondent

Vs.

1.Renuka
2.Saravanan ... Respondents 1 & 2/Petitioners
3.M.Veeraragavan

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 02.11.2019 passed in MCOP No.3026 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub-Court-2, Small Causes Court, Chennai.

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.K.Varadha Kamaraj (for R1 and R2)
R3-Given up

JUDGMENT

V.SIVAGNANAM, J.

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, Special Subordinate Court No.II, Small Causes Court, Chennai in MCOP No.3026 of 2018 dated 02.11.2019.

2.This is the case of fatal accident. The case of the claimants is that on 17.10.2017 at 16.30 hours, the deceased Prathap was sitting on the mudguard of the Tractor bearing

Reg.No.TN-21-AD-6382 involved in the agricultural operation. At that time, the driver of the Tractor drove it in a rash and negligent manner and turned the Tractor. Thereby, the deceased was thrown away from the Tractor and fell down under Tractor rotator. In the impact, the deceased sustained multiple grievous injuries and died on the spot. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the Tractor, the claimants laid a petition, claiming compensation of Rs.40,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive.

4.To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P.1 to Ex.P.10 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and Exs.R.1 to R3 were marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the Tractor was responsible for the accident and awarded compensation of Rs.21,51,200/- to the claimants. Further, the Tribunal directed the appellant Insurance Company to deposit the award amount with liberty to recover the same from the owner of the Tractor. Assailing the award, the appellant Insurance Company has filed the present appeal.

6.The learned counsel for the appellant Mr.R.Sivakumar submitted that while the Tractor in question was involved in agricultural activities, the deceased was allegedly travelling on the mudguard of the said Tractor. The Tribunal relied upon the Judgment reported in 2018(2) TN MAC 273 (SC) (Shivaraj vs. Rajendra). In that case, insurance policy covered risk of 1 + 4. Therefore, the Hon'ble Supreme Court ordered to pay compensation amount to the claimants with liberty to recover the same from the owner of the vehicle. But in this case, the policy covers only for the driver alone. Therefore, the Tribunal misconstrued the Judgment of the Hon'ble Apex Court and awarded compensation with liberty to recover from the first respondent, owner of the vehicle. He further submitted that the deceased admittedly travelled in the Tractor in breach of policy conditions. The Insurance Company cannot be made liable to to pay compensation either to the owner or the claimants. The reliance placed by the Tribunal is not applicable to the case on hand and thus, the learned counsel pleaded to allow this appeal. In support of his contention, the learned counsel produced the following Judgments:-

(i) 2017(1) TN MAC 662 [C.Pinniammal vs. Jakkammal]

(ii) 2017(1) TN MAC 665 [Susila vs. V.Sambandam]

(iii) 2021(1) TN MAC 360 [Branch Manager, New India Assurance Co. Ltd., vs. Chinnapillai (died)]

(iv) 2021(1) TN MAC 516 [Maheswari vs. M.Anthonysamy]

(v) 2021(2) TN MAC 41 [United India Insurance Co. Ltd., vs. Rangasamy]

(vi) 2021(2) TN MAC 116 (FB) (Kar.) [Gadhilingappa vs. K.Guleppa]

(vii) 2018(2) TN MAC 273 (SC) [Shivaraj vs. Rajendra & another]

7.The learned counsel appearing for the respondents/ claimants submitted that the Court has ample power to direct the insurance company to pay compensation with liberty to recover the same even in respect of a gratuitous passenger in goods vehicle. In this case, the deceased travelled in the mudguard of the Tractor during the work of ploughing field and pleaded to dismiss the appeal.

8. We have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the learned counsel for the respondents/ claimants. We have also perused the evidence on record and the documents.

9.A consistent view has been taken by the Hon'ble Apex Court and the Division Bench of this Court reported in 2018(2) TN MAC 731 (Bharati AXA General Insurance Co. Ltd., vs. Aandi) and in 2004(1) CTC 210 (SC) : 2004(2) SCC 1 (National Insurance Co. Ltd., vs. Baljit kaur and others. The principle is that the Insurance Company cannot be made liable to pay the compensation for gratuitous passengers who were neither contemplated at the time when the contract of insurance was entered into nor any premium was paid to extend the insurance coverage to such category of people. It has also been clearly held that in many cases, the claimants may not be able to realize the award amount from the owner of the vehicle involved in the accident. Even in those cases, without policy coverage, no direction be issued to the insurance company to pay compensation giving liberty to recover the same from the owner. Under these circumstances, we are unable to give such direction to the Insurance Company to pay compensation to the claimants and then recover the same from the owner.

10.Therefore, we are of the view that the appeal is liable to be allowed as want of policy coverage. With regard to the quantum, no dispute is raised by both the parties. Hence, with regard to the liability, we allow the appeal and the appellant

Insurance Company is not liable to pay compensation to the claimants and the compensation has to be paid by the owner of the vehicle i.e., the third respondent herein.

11.With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skn

To

1. The Motor Accidents Claims Tribunal,
   Special Subordinate Court No.2,
   Court of Small Causes, Chennai.

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

+1CC to Mr.R.Sivakumar, Advocate, Sr.No.56019
+1CC to Mr.K.Varadha kamaraj, Advocate, Sr.No.56452
+1CC to Mr.V.Chithambaram, Advocate, Sr.No.56506

JUDGMENT MADE IN
C.M.A.No.1442 of 2020
and
C.M.P.No.10597 of 2020

PM (CO)
K.RK. (30.11.2021)