IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2021

Pronounced on : 02.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.2617 of 2014
and MP.No.1 of 2014

M/s.New India Assurance,
Kumbakonam .. Appellant/2nd Respondent

Versus

1. Sekar
2. Vijaya
3. Kaliyamoorthy .. Respondents/Petitioners 1 & 2/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP No.278 of 2012 on 20.03.2014 on the file of the learned Motor Accident Claims Tribunal (Additional Sub Judge), Mayiladuthurai.

For appellant	:	Mr.J.Chandran
For respondents		
for RR1 & 2	:	Mr.K.M.Vijayan Associates
for R3	:	Mr.A.Rajesh Kanna

J U D G M E N T

The appeal is heard through video conferencing.

2. Challenging the award passed by the Motor Accident Claims Tribunal (Additional Sub Judge), Mayiladuthurai in MCOP No.278 of 2012, dated 20.03.2014 directing the appellant to pay and recover the compensation amount from the owner, the present appeal has been filed by the Insurance Company.

3. The claimants/respondents 1 & 2 are the parents of the deceased. It is the case of the claimants that on 21.04.2011 at 8.30, the deceased Vimal Raj travelled in a Mahindra Tractor, belonging to the third respondent, to go to a Temple. When the tractor was nearing Aakoor Mukkattai Kandi Kidangu Main Road,

the driver of the said Tractor drove the vehicle in a rash and negligent manner, as a result of which, the deceased fell down from the Tractor and sustained head injury. Immediately, he was taken to Government Hospital, Mayiladuthruai, but he was declared brought dead.

4. It is the further case of the claimants that the deceased was 13 years old and studying in 8th standard at the time of the accident. Due the sudden demise of the deceased, the claimants lost his love and affection. Hence, they made a claim for a sum of Rs.10,00,000/- as compensation.

5. The said claim petition was resisted by the appellant/Insurance Company by filing a detailed counter statement. The specific contention of the appellant/Insurance Company is that the deceased travelled in the Tractor as a gratuitous passenger in the mudguard of the Tractor and fell on his own and died. As per the terms of the Insurance Policy, other than the driver, no other person is allowed to travel in a Tractor. Since the deceased travelled in the Tractor as a gratuitous passenger, as per the terms of the Insurance Policy, the Insurance Company need not pay any compensation to the claimants.

6. It is further stated that at the time of the accident, the driver of the said Tractor was not having licence. Hence, they are not liable to pay any compensation to the claimants.

7. In order to prove the claim on the side of the claimants, two witnesses were examined and Exs.P1 to P6 were marked. On the side of the Insurance Company, one Mr.Shankar, was examined as RW1 and Exs.R1 & R2 were marked.

8. The Tribunal after analysing the entire evidence came to the conclusion that the accident had occurred due to the neligence of the driver of the Tractor. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.2,10,000/-, and directed the appellant/Insurance Company to pay the said amount with liberty to recover the same from the third respondent/owner of the said Tractor. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which amounts are awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	1,50,000
2.	Funeral Expenses	5,000
3.	Transportation Expenses	5,000

S.No.	Heads under which amounts are awarded by the Tribunal	Amount in Rs.
4.	Loss of Love and Affection	50,000
	Total	2,10,000

9. Now, it is the contention of the learned counsel for the appellant/Insurance Company that at the time of the accident, the deceased Vimal Raj was 13 years old and he was not qualified to be an employee or load man in the said Tractor. In the absence of any seating provisions, the deceased travelled on the mudguard of the tractor, which is prohibited under law. Therefore, the Tribunal ought to have held that the deceased travelled on the tractor as an unauthorized passenger, which is against law, and hence, the claimants are not entitled for any compensation at all. In any event if the claimants are entitled for any compensation, the driver and owner of the Tractor alone are liable. Further, the deceased travelled in violation of R.C. Permit and terms and conditions of Insurance Policy and hence, the appellant/Insurance Company may be totally exonerated from the liability in paying the compensation amount.

10. Per contra, the learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

11. Heard both sides and perused the materials available on record.

12. Since the present appeal has been filed only questioning the liability, this Court is not traversing on the other aspects of the award passed by the Tribunal.

13. The accident occurred on 06.12.2011 when the deceased was travelling on the mud guard of the Tractor. The Tractor had a permit for transporting agricultural produce only but the deceased travelled in the tractor to go to a Temple, which is admittedly not an agricultural activity.

14. Section 147 of the Motor Vehicle Act speaks of liability which may be incurred by the owner of vehicle in respect of the death or injury on any person or damage to the vehicle. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of section 147 of the Motor Vehcile Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of

the vehicle in a public place.

15. Therefore, the deceased or injured must be either a third party or a person falling within the classification of owner of the goods or the authorised representative of the owner of the goods.

16. In a case where the injured travelled in a Tractor fitted with Trailor, the Hon'ble Supreme Court in National Insurance Co. Ltd. vs. Chinnamma [(2004) 8 SCC 697] has held as follows:-

> "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 mother 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, or other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle'.
>
> A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetable being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. the deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the 'goods carriage' as contained in Section 2(14) of the Motor Vehicles Act, the caue would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into

force of 1994 amendment.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly This appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs."

17. In the instant case, the deceased is not an employee under the third respondent, who is the owner of the Tractor. The Tractor specifically meant for transporting agricultural produce. In this case, at the time of accident, the Tractor was not used for any agricultural purposes but to transport the deceased to a Temple. Other than the driver, if any one travelled in the Tractor, he is considered only as a gratuitous passenger. Therefore, the Insurance Company is not liable to pay the compensation amount. Further, the Supreme Court has clearly reiterated that the liability of the insurer would be limited to a third party and not to the gratuitous passenger.

18. In Manager, IFFCO-Manger, IFFCO-Tokyo General Insurance Company Ltd. vs. G. Ramesh [(2012) 1 TN MAC 8200 this Court referring the Full Bench judggemnt of this Court in the case of United India Assurance Co. Ltd. vs. Nagammal [(2009) 1 TN MAC 1 (FB)] and other judgments, has held as follows:

"...the question as to whether the Insurance Company is statutorily liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by Hon'ble Apex Court in Asha Rani's case by reversing the earlier decision in Saptal Singh's case and further question as to whether the doctrine of "pay and recovery" theory, which is applied till then, by directing the Insurer to satisfy the award and to recover the amount from the insured even though the Insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench Judgment of our High Court". As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the Insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passengers travelling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."

19. In the instant case, the deceased travelled in the mud guard of the Tractor contrary to the policy condition as well as the permit condition, and hence, the same is not covered under the Insurance Policy. The mud guard of the Tractor is not meant for carrying the passenger. Having violated the policy

condition, the Insurance Company cannot be mulcted with the responsibility to even pay and recover the compensation from the owner of the vehicle.

In the said circumstances, this Court holds that:

(i) The Insurance Company is absolved from liability due to the violation of policy condition;

(ii) The claimants shall proceed against the owner of the vehicle for recovery of the award amount.

20. In the result, the Civil Miscellaneous Appeal is allowed and the appellant Insurance Company is exonerated from the liability of paying compensation to the claimants. In respect of quantum and apportionment, the award passed by the Tribunal is confirmed. The entire liability is fixed on the third respondent/the owner of the Tractor. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Additional Subordinate Judge,
The Motor Accident Claims Tribunal,
Mayiladuthurai

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

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.44205
+1cc to Mr.J.Chandran, Advocate SR.No.44307

C.M.A. No.2617 of 2014

KK(CO)
CB(12/10/2021)