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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.1708 OF 2017

AND

CMP NO.9210 OF 2017

The Divisional Manager,
The Oriental Insurance Company Ltd.,
75, Krishnan Street, First Floor,
Tiruvannamalai Town and District.

...Appellant/2nd Respondent

Vs

1.Arunachalam

2.Virudha

...1st and 2nd Respondents/Petitioners

3.G.Vediyappan

...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2016 made in M.C.O.P.No.22 of 2016 on the file of the Special Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellant

: Mrs.Elveera Ravindran

For Respondents

: Mr.B.Jawahar for R1 and R2
R3-No Appearance



J U D G M E N T

Heard the learned counsel for the appellant and the respondents 1 and 2.

2.The appeal is filed by the Insurance Company aggrieved by the award passed by the Tribunal ordering pay and recovery.

3.The short facts involved in this case is that while the Tractor owned by one VEDIYAPPAN insured with the appellant Company caused the death of 12 years old boy by name PACHAIAPPAN. The F.I.R. regarding the fatal death of PACHAIAPPAN was given by the Village Administrative Officer of that village. In the said information, it has been stated that the deceased boy was sitting in the Rotavator Tractor and due to the negligence of the Tractor Driver, he fell and got caught between the blades and died on the spot. Later, when the claim petition was filed, a different version was given by the claimants, who are the parents of the deceased boy stating that the boy was on the field and the Tractor hit him causing his death.

4.The Tribunal, after considering the evidence, has observed that the Tractor Rotavator is meant for ploughing the soil and there is no possibility of sitting on the Tractor, as stated by the VAO in his complaint and the V.A.O. was not the eyewitness to the accident and he is only informant. Therefore, the information given by him regarding the manner in which the accident took place, may not be accurate. Having held so, the Tribunal has also found that the Tractor owner cum driver had no valid driving license and therefore, the owner cum driver of the Tractor is not entitled for indemnification from the Insurance Company. However, taking into consideration the principle of pay and recovery, the Tribunal has awarded Rs.8,80,000/- compensation payable with 7.5% interest by the Insurance Company and thereafter, to recover the same from the owner cum Driver of the Tractor, VEDIYAPPAN.

5.In this appeal, the Insurance Company has contended that the Tribunal failed to appreciate that F.I.R., Ex.P1 and



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Chargesheet, Ex.R2 which clearly indicate that the victim was travelling on the mudguard of the Tractor and fell down and died. Therefore, the deceased who was an unauthorised passenger in the Tractor, is not entitled for any coverage as per the policy. The Tribunal grossly erred in rejecting the F.I.R., when the same was sought to be relied by the claimants. P.W.2, who claimed to be the eyewitness to the accident, has not explained why he did not inform the police about the accident. When the Tractor driver had no valid driving license, the Tribunal ought not to have ordered pay and recovery, since the violation is very fundamental. It is also contended that the compensation of Rs.8,80,000/- for the death of 12 years old boy is highly excessive and exorbitant.

6.Learned counsel for the claimants/respondents submitted that the boy used to go for agricultural coolie after the school hours due to his poverty and in this accident, the claimants have lost their only son. Taking note of the fact that the deceased was fatally injured by the Tractor, the Tribunal has awarded fair and adequate compensation.

7.Learned counsel for the appellant contrarily submitted that the provision of the Motor Vehicles Act does not provide for awarding compensation for an unauthorised passenger, who travels in a Tractor. The deceased is not a third party. Even assuming he was engaged as an agricultural coolie, as an employee of the Tractor owner under Section 147 of the Motor Vehicles Act, there is no liability for the Insurance Company to pay him, since there is no coverage.

8.This Court to appreciate the above submission when want to find out what was the coverage and premium paid by the Tractor owner for claim and then this Court found that neither the claimant nor the Insurance Company has filed the copy of the Insurance Policy. In view of the fact that the Insurance Policy is not placed before this Court, it is not possible for this Court to hold that the Insurance Company is not liable to pay any compensation and liable to indemnify for the claims made against it.



9.As far as the present case is concerned, F.I.R. Ex.P1 and the final report Ex.R2 indicates that the deceased boy was travelling on the mudguard of the Tractor and fell down and caught under the Rotavator whereas P.W.2 in his evidence has deposed that the victim boy, who was in the field, was hit by the Tractor. The Tribunal, after appreciating the evidence and expressing his personal knowledge about the nature of the vehicle, had held that there is no possibility for a person to sit in the mudguard of a Tractor, which is attached to a Rotator.

10.This Court has consistently taken a view that any person, who travels in a Tractor on a public road beyond the seating capacity, should be considered as an unauthorised passenger and the Insurance Company is not liable to compensate such unauthorised passengers. But, here is a case, admittedly the accident occurred, when the Tractor was operating in the field . Whether the boy was on the mudguard of the Tractor or on the field, he is not a passenger travelling in the Tractor from one place to another. His movement was within the field and he cannot be termed as an unauthorised passenger. If the victim is not an unauthorised passenger, he must be either employee or a third party. From the material placed, this Court is not able to find out whether he was employed by the land owner as an agricultural coolie or employed by the Tractor owner to assist him, while ploughing the field. Either way, his dependents cannot be deprived of compensation, since the accident has occurred involving a motor vehicle. The Tribunal after considering all these facts and taking into consideration that the owner cum driver of the Tractor had no valid driving license following the principle laid by the Supreme Court, had ordered pay and recovery. This Court is conscious of the fact that the accident had occurred on 03.09.2011, nearly a decade ago and the claimants/parents of the deceased boy had lost their only son. Therefore, at this juncture, it will be inappropriate to interfere or alter the judgment of the Tribunal both on liability as well as on the quantum, though in the opinion of this Court, the quantum of compensation awarded is marginally excessive.



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11. With the above observation, the civil miscellaneous appeal is dismissed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

vri

To

1. The Special Motor Accidents Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.14475

CMA NO.1708 of 2017

GMR(CO)
RLP(13/09/2021)