



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On :27.02.2020
Delivered On :12.02.2021
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.1372 of 2008

The Branch Manager,
New India Assurance Co., Ltd.,
No.480, Chekkalai Road,
Karaikudi.

.. Appellant/2 Respondent

Vs.

1.Anjalai

2.Meenal

3.Surya Kala

4.Minor Ambika

5.Minor Rajaram .. 1 to 5 Respondents/Claimants
(Respondents 4 and 5, minors are represented by 1st respondent,
mother and next friend)

6.E.Selvakumar ..6th Respondent/1 Respondent

(6th respondent was set exparte in the Tribunal. Hence, notice has
to be dispensed with)

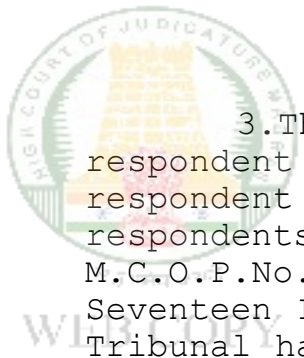
Prayer: This Civil Miscellaneous Appeal is filed under Section 173
of Motor Vehicles Act, 1988, to set aside the judgment and decree
passed in M.C.O.P.No.149 of 2003 dated 21.11.2007 on the file of the
Motor Accident Claims Tribunal, Devakottai.

For Appellant : Mr.J.S.Murali
For Respondents 1 to 5 : Mr.H.Arumugam

ORDER

Heard learned counsel appearing on either side.

2.This Civil Miscellaneous Appeal has been filed against the
judgment and decree passed in M.C.O.P.No.149 of 2003 dated
21.11.2007 on the file of the Motor Accident Claims Tribunal,
Devakottai.



3.The appellant herein is the second respondent, the respondent 1 to 5 herein are the petitioners/claimants and the 6th respondent herein is the first respondent in the claim petition. The respondents 1 to 5 herein have filed a claim petition in M.C.O.P.No.149 of 2003 claiming a sum of Rs.17,91,000/- (Rupees Seventeen Lakhs and Ninty One Thousand only) as compensation. The Tribunal has awarded a sum of Rs.3,00,300/- (Rupees Three Lakhs and Three Hundred only) as compensation. Against which, the appellant/insurance company has filed the present appeal.

4.A brief substance of the claim petition in M.C.O.P.No.149 of 2003 is as follows:

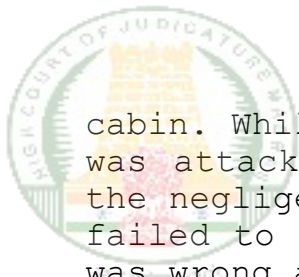
On 13.06.2003, at about 10 a.m., the deceased Kannusamy and Arulsamy and others collected Karuvellam wood from Serthani kanmoi and loaded the wooden logs in a lorry that belonging to the sixth respondent herein bearing the registration No.TN-65-7443. The deceased Kannusamy and one Pandi were sitting on the top of the wooden logs. One Solomon was driving the lorry in a rash and negligent manner and the deceased was thrown away from the lorry and he fell upon an electric wire and died on the spot. The deceased was working as a loadman. The accident took place due to the rash and negligent driving of the lorry driver. The respondents in the claim petition are liable to pay compensation of Rs.17,91,000/- (Rupees Seventeen Lakhs and Ninety One Thousand only).

5.The brief substance of the counter filed by the appellant herein is as follows:

The vehicle is only a goods vehicle. The deceased and one other person without hearing the advice of the driver, were travelling on the top of the vehicle and the deceased died due to electrocution. The death was due to the negligent act of the deceased and the lorry driver is not responsible for the accident. The age, profession and income of the deceased is to be proved by the claimants. It is not necessary for the appellant herein to pay any compensation to the claimants.

6.On the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 6 documents were marked as Exs.P1 to P6. On the side respondents in the claim petition, one witness was examined as R.W.1 and one document was marked as Ex.R1. After considering both sides, the Tribunal awarded a sum of Rs.3,00,300/- (Rupees Three Lakhs and Three Hundred only) as compensation. Against which, the appellant/insurance company has preferred this appeal.

7.On the side of the appellant, it is stated that the Tribunal has failed to consider that the insured has violated the statutory provision of Section 238 of the Tamil Nadu Motor Vehicles Rules by allowing the deceased to travel on the top of the goods



cabin. While the deceased was travelling on the top of the lorry, he was attacked by an electric wire and he died on the spot and that the negligence is only on the part of the deceased. The Tribunal has failed to consider the evidence of R.W.1 and the multiplier applied was wrong and prayed the award to be set aside.

8. On the side of the appellant, it is stated that the deceased was an unauthorized passenger in the goods vehicle who travelled on the top of the lorry. He fell down due to electrocution and not due to any other accident. The deceased was not a loadman and the findings of the Tribunal was wrong.

9. The learned counsel for the appellant would rely upon the judgment passed by this Court in the case of **Bharati AXA General Insurance Co., Ltd., v. Aandi and others**, reported in **2018 (2) TNMAC 731 (DB)**, wherein it is states as follows:

"Unauthorized passengers/gratuitous passengers in good vehicle - liability of insurer in respect of - whether insurer can be directed to pay and recover - insurance policy, a mandatory statutory requirement, required to cover only certain classes of person - no mandatory requirement for insurer to cover persons travelling as passengers in goods vehicles, unless such passenger is owner or agents of owner of goods accompanying goods in vehicle..... Tribunal not right indirecting insurer to pay and recover - mere difficulty in realizing award amount from owner of vehicle, cannot impel court to do something against provisions of statutes and apex Court dictum - Award as against insurer set aside."

10. On the side of the respondents, it is stated that the lorry owner has admitted that the deceased was a loadman working under him and that premium was paid for 10 loadmen. The lorry cabin cannot accommodate more than seven persons and the deceased has to travel on the top of the lorry and that the insurance company is liable to pay compensation.

11. The learned counsel for the respondents would rely upon the unreported judgment passed by this Court in the case of **the National Insurance Company Limited v. Nakshadram**, in **C.M.A. (MD) No.658 of 2015**, wherein it is stated as follows:

" The deceased was sitting on the top of the loaded timber. From all this, one can come to the safe conclusion that the deceased was also acting as a loadman. Admittedly, the policy covers the loadman also. The Tribunal on an appreciation of the evidentiary material on record came to the conclusion that the deceased can also be treated as a loadman.

I sustain the findings of the Tribunal that the



deceased travelled in the goods vehicle only as a loadman. Therefore, the accident is squarely covered by the terms of the insurance policy. The appellant insurance company is bound to compensate the claimants."

12.The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **the National Insurance Company Limited v. Baljit Kaur Others**, reported in (2004) 2 SCC 1, wherein it is stated as follows:

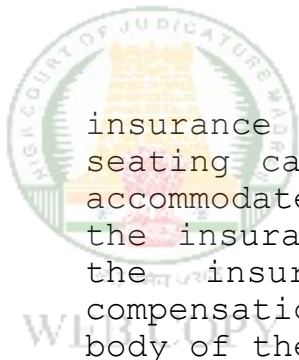
"It is therefore, manifest that inspite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same."

13.The learned counsel for the respondents would rely upon the unreported judgment passed by this Court in the case of **the New India Assurance Company Limited v. Thilliammal and others**, in (2005) 3 MLJ 17, wherein it is stated as follows:

"Since the appellant insurance company is not disputing the fact that the deceased was a loadman engaged by the third respondent/owner of the vehicle, and the accident took place during the course of his employment, as rightly pointed out by the learned counsel appearing for the third respondent/owner of the vehicle, in our considered opinion, the appellant insurance company is liable to pay the compensation for the death of the deceased Arumugam in view of the clause 4 of the general exceptions to the policy, whereunder the liability of the insurance company is not excluded with reference to the death or bodily injury of any person, who is a passenger or govern under the contract of employment. Hence, finding no reasons to interfere with the award passed by the tribunal dated 10.06.1996 made in M.A.C.T.O.P.No.639 of 1992, the appeal stands dismissed. No Costs."

14.Admittedly the deceased travelled in the goods vehicle on top of the lorry. The deceased was thrown on the electric wire and died on the spot. The case of the appellant is that the deceased was negligent in travelling on the top of the lorry and that the deceased is only a gracious passenger in a goods vehicle and that the appellant is not liable to pay compensation.

15.The evidence of the owner of the vehicle clearly reveals that the deceased was working as a loadman. The fact that the deceased travelled on the top of the wooden logs reveals that the deceased was travelling as a loadman and not as a gracious passenger. Admittedly there is policy coverage for 10 loadmen. The



insurance company is collecting premium for loadmen beyond the seating capacity available in a lorry cabin. The lorry cabin can accommodate only 3 to 4 persons and certainly not 10 persons. When the insurance company collected premium for 10 loadmen indirectly the insurance company takes the responsibility of paying compensation to the persons, who travelled with the goods in the body of the lorry.

16. In view of this fact, the insurance company cannot claim that the insurance company is not liable to pay the compensation for the persons, who travelled with the goods in the lorry. The citations filed on the side of the respondents are squarely applicable to the present case.

17. The Tribunal has fixed the monthly income of the deceased as Rs.3,000/- (Rupees Three Thousand only) per month and fixed the age of the deceased as 50 years and awarded a sum of Rs.2,64,000/- (Rupees Two Lakhs Sixty Four Thousand only), after calculating the income with multiplier. The Tribunal has awarded Rs.1,000/- (Rupees One Thousand only) towards transportation expenses and Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses and Rs.300/- (Rupees Three Hundred only) towards loss of articles and Rs.10,000/- (Rupees Ten Thousand only) towards consortium for the wife and Rs.5,000/- (Rupees Five Thousand only) towards the loss of love and affection for the other claimants and fixed total compensation as Rs.3,00,300/- (Rupees Three Lakhs and Three Hundred only).

18. A perusal of the records reveals that there is no discrepancy in the award fixed by the Tribunal and hence, there is no merit in the appeal.

19. In the above circumstances, this Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.149 of 2003 dated 21.11.2007 on the file of the Motor Accident Claims Tribunal, Devakottai is confirmed.

20. The appellant is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of realization and with costs. The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimants are permitted to withdraw their respective shares after deducting any amount received by them earlier without filing any formal petition before the Tribunal. Insofar as the share of the minors/ respondents 4 and 5 is concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under a periodically renewable scheme till they attain majority and the first respondent, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors. Excess amount if any deposited



shall be refunded to the appellant. No Costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

MRN

Note : (I) Both sides present. The learned counsel for both sides consented for pronouncing the order today. Order was already ready and only due to lockdown, the order could not be pronounced earlier. With the consent of the learned counsel for both sides, the order is pronounced today.

(ii) In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
Devakottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-5032[F] dated 15/02/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-5206[F] dated 15/02/2021)

C.M.A. (MD)No.1372 of 2008
12.02.2021

SVN(CO)
KB(08.03.2021) 6P 6C