



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :26.02.2020

Delivered on :12.02.2021

CORAM:

THE HONOURABLE Mrs. JUSTICE R.THARANI

C.M.A. (MD) .No.583 of 2008

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The Branch Manager,
National Insurance Company Limited,
323/1, 2nd Floor, Sekkalai Road,
Karaikudi Town, Karaikudi.

... Appellant/2nd Respondent

Vs.

1.Lakshmi
2.Anguchamy
3.Kalaiselvi
4.Minor Deepa

(Minor represented by her mother and natural guardian R1)

5.Kaarthi

... Respondents/ Petitioners

6.S.Siranjeevi

... Respondent/ 1st Respondent

PRAYER: This appeal has been filed under Section 173 of M.V. Act, 1988, to set aside the award dated 09.01.2006 passed in M.A.C.O.P.No.352 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Ramanathapuram.

For Appellant : Mr.J.S.Murali

For R1 to R5 : Mr.D.Senthil

For R6 : Mr.C.Shaji Chellan

JUDGMENT

This Appeal has been filed against the award granted in M.C.O.P.No.352 of 2003 dated 09.01.2006, on the file of the Motor Accident Claims Tribunal, Additional District Court, Ramanathapuram.

2.The appellant is the 2nd respondent, the respondents 1 to 5 are the petitioners and the 6th respondent is the first respondent in M.C.O.P.No.352 of 2003.

3.The respondents 1 to 5 have filed a petition claiming compensation of Rs.3,00,000/- for the death of one Vellaichamy, who died in an accident. The Tribunal has awarded a sum of Rs.2,32,000/- as compensation. Against which, the appellant preferred this appeal.

4.The brief substance of the petition in M.C.O.P.No.352 of 2003 is as follows:-

on 14.07.2003, at about 2.30 p.m, when the petitioner rented

<https://hcservices.ecourts.gov.in/hcservices/>



a Tractor TN-63-P-1614 and after filling diesel, returning to his village M.Karisalkulam, the driver of the Tractor drove the vehicle in a rash and negligent manner causing the deceased Vellaichamy to fell down from the Tractor and the iron plough pierced him and he died on the spot. The deceased Vellaichamy was aged about 30 years. At the time of his death, he was earning a sum of Rs.3,000/- per month and the first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle and they are liable to pay a compensation of Rs.3,00,000/- to the claimants.

5.The brief substance of the second respondent in M.C.O.P.No.352 of 2003 is as follows:-

The driver of the vehicle followed the road rules properly. The accident happened only because of the negligence of the deceased, who tried to jump from the Tractor, while the Tractor was running. The age and income of the deceased has to be proved.

6.Two witnesses were examined on the side of the petitioners and EX.P.1 to Ex.P.7 were marked. One witness was examined as D.W.1 and Ex.R1 was marked on the side of the respondent. The Tribunal after considering both sides, awarded a sum of Rs.2,32,000/- as compensation. Against which, the second respondent preferred this appeal.

7.The case of the appellant is that the insurer is not liable to pay compensation in respect of a passenger who travelled in a Tractor, which is a non-transport vehicle without any space for seating a passenger. Carrying of a person in a Tractor is not permissible in law and there is no policy coverage for such persons. The appellant has to be exonerated.

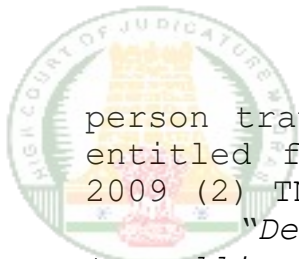
8.On the side of the appellant, it is stated that only a driver alone can travel in a Tractor. The deceased is a gratuitous passenger. The Tractor was used only for commercial purpose. The owner of the vehicle alone is liable to pay compensation for the death of the gratuitous passenger. A judgment of this Court reported in 2017 (1) TN MAC 662 is cited wherein it was decided as follows:-

" Tractor not attached with Trailer and deceased travelled sitting on Mudguard of Tractor - Tractor without Trolley cannot be termed as Goods vehicle - Persons travelling in Tractor being gratuitous passengers not entitled to Compensation - Violation of Policy conditions - Tribunal rightly exonerated Insurer and fastened liability on Owner of vehicle."

9.On the side of the appellant, it is stated that the deceased was not entitled to travel in a Tractor. The Tractor has a seating capacity for only one person, i.e., is driver. Nobody is permitted to travel on the mudguard of a Tractor. A judgment of the High Court of Madhya Pradesh, Gwalior Bench reported in 2020 ACJ 594

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<https://hcservices.ecourts.gov/hcservices/> On the side of the claimants, it is further argued that a



person travelling with a driver is only a pillion passenger and is entitled for compensation. A judgment of this Court reported in 2009 (2) TN MLJ 275 is cited wherein it was decided as follows:-

"Deceased a twelve years girl studying tenth standard travelling in a tractor sitting by the side of the driver, at the time of the accident - died out of road accident and her father was awarded a compensation Rs.1,47,000/- by the tribunal - on Appeal by the Insurance Company the High Court held that she was travelling as a Pillion Passenger and entitled to compensation from the owner of the vehicle only - further directed that Insurance Company shall pay the compensation and recover from owner of the vehicle."

13.On the side of the claimant, it is stated that employee of the owner of a goods vehicle when his claim is not disputed by the owner and when the Insurer did not let in any evidence to rebut evidence of the claimant, the claimant is entitled to claim compensation. A judgment of this Court reported in 2008 (1) TN MAC 54 is cited wherein it was decided as follows:-

"Workman - Deceased, employee of owner of goods vehicle - Claim not disputed by owner - Nor Insurer let in any evidence to rebut evidence of P.W.1/Claimant who categorically stated that deceased was employed under owner - Therefore, finding of Commissioner that deceased was a workman under owner of vehicle, held, correct and same does not suffer from any infirmity."

14.On the side of 6th respondent, it is stated that the 6th respondent was the owner of the vehicle and in the petition itself it was clearly stated that the Tractor was engaged for the purpose of ploughing the land. The Tractor was used only for agricultural purpose and the deceased was an agricultural coolie and he is entitled for compensation. The deceased travelled in the Tractor in the capacity of a load man and not in the capacity of an unauthorised passengers and that the claimants are entitled for compensation from the Insurance Company. A judgment of this Court in C.M.A.No.3155 of 2005 dated 06.06.2019 is cited wherein it was decided as follows:-

"From the narration of facts and events and evidence available on record, it is clear that the deceased had travelled in the tractor in the capacity as Loadman and not in the capacity as unauthorized passenger and therefore, the deceased, being a person, authorised to travel in the vehicle and hence, the Legal Representatives of the deceased are entitled to compensation from the Insurance Company"

15.On the side of 6th respondent, it is further stated that when a coolie travelling in a Tractor trailer met with an accident, the policy covered the risk of driver and the coolies and other



employees. A judgment of this Court reported in 2015 ACJ 140 is cited wherein it is decided as follows:-

"Deceased was working as agricultural coolie and policy covered the risk of driver, coolies and other employees connected with the operation of loading/unloading of the vehicle - Whether insurance company is liable - Held: Yes."

16. Ex.P.1 is the FIR. Ex.P.2 is the observation Mahazar. Ex.P.3 is the Rough Sketch. Ex.P.4 is the Motor Vehicle Inspection Report. Ex.P.6 is the Charge Sheet. On the basis of the evidence of P.W.1 & P.W.2 and on the basis of Ex.P.1 to 4 and 6, the Tribunal has come to a conclusion that the accident was due to the rash and negligent driving of the driver of the Tractor.

17. Ex.P.5 is the Postmortem Certificate for the deceased Vellaichamy. Ex.P.7 is the Legal Heir Certificate. It is seen that the deceased died due to the accident and the claimants are the legal heirs of the deceased.

18.The Insurance Policy was marked as Ex.R.1 through R.W.1. Ex.R.1 reveals that the policy was in force at the time of accident. R.W.1 has admitted that the policy was in force at the time of accident. He has admitted that the driver of the vehicle was having a valid driving license. There is no dispute that the policy covers driver and agricultural coolies or load men in the vehicle. The only contention of the appellant is that the deceased travelled on the mudguard of the vehicle and he is only a gratuitous passenger and that there is no trailer attached to the Tractor at the time of accident and that there is no necessity for a load man.

19.The contention of the appellant is that when the Tractor is engaged for ploughing the land, there is no necessity for a trailer. When there is no trailer, an agricultural coolie cannot travel in the trailer.

20.A trailer is not ment for the usage of passengers and of course, mudguard is also not ment for travelling. But unfortunately, the Insurance Company collects premium for load men and for coolies. When a load man or a coolie, could not be accommodated in a trailer or on the mudguard it is wrong on the part of the Insurance Company to collect premium for those persons. Once the Insurance Company collect premium for a passenger who cannot actually travel in a particular vehicle, it can be presumed that the Insurance Company undertakes the liability to compensate the said passengers.

21.In the light of the above observations, the citations placed by the Insurance Company are not applicable to the present facts of the case. Hence, it is decided that the Insurance Company is liable to pay compensation to the claimants.



22.The Tribunal fixed the age of the deceased as 40 on the basis of the Postmortem Certificate. The Tribunal fixed the monthly income as Rs.1,000/-. After applying multiplier 16, the Tribunal fixed the loss of income as Rs.1,92,000/-, Which is reasonable. The Tribunal awarded a sum of Rs.10,000/- as consortium and awarded a sum of Rs.15,000/- for loss of love and affection for 2 to 4 claimants and Rs.10,000/- for the 5th claimant. The Tribunal awarded a sum of Rs.5,000/- towards funeral expenses and has awarded a total compensation of Rs.2,32,000/-. The calculation made by the Tribunal is correct and it requires no interference.

23.In view of the above, there is no merit in this appeal. Hence, the order passed in M.A.C.O.P.No.352 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Ramanathapuram, is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

24.The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit with cost within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the major claimants are permitted to withdraw their share in the ratio apportioned by the Tribunal without filing any formal permission petition before the Tribunal. The shares of the minor claimant shall be kept in fixed deposit in a Nationalised Bank till the minor attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st claimant/mother of minor once in three months directly from the bank.

Sd/-

Assistant Registrar (CS-I)

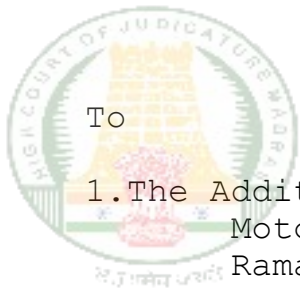
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/ /2021

Sub Assistant Registrar(CS)

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 Additional District Judge
Motor Accident Claims Tribunal
Ramanathapuram.

2.V.R.Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-5031[F] dated 15/02/2021)

+1 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-5048[F] dated
15/02/2021)

+1 CC to M/s.D.SENTHIL, Advocate (SR-5031[F] dated 15/02/2021)
delivery order

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12.02.2021

MJ(CO)
KB(03.03.2021) 7P 7C