



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.865 of 2010

1.Kamarnisha
2.Shyla Banu
3.Zahir Hussain
4.Kaisa Ammal

... Appellant/Petitioner

-vs-

1.Syed Rowther

2.The Branch Manager
The New India Assurance Co., Ltd.,
Pudukkottai

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair order and decreetal order, dated 17.12.2008, made in M.C.O.P.No.549 of 2003, on the file of the learned Motor Accident Claims Tribunal (Additional District Judge - Fast Track Court), Pudukkottai.

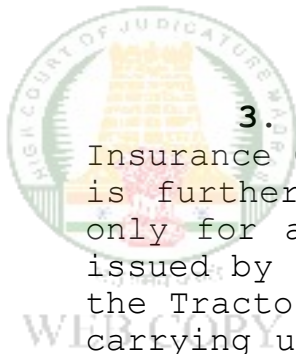
For Appellant : Mr.R.P.Ramachanthiran

For Respondents : Mr.S.Badrinath for R1
Mr.J.S.Murali for R2

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award, dated 17.12.2008, passed in M.C.O.P.No.549 of 2003, by the Motor Accident Claims Tribunal (Additional District Court - Fast Track Court), Pudukkottai.

2. The appellants herein are the legal heirs of the deceased Thanga Meera, who died in an accident took place on 30.06.2002. It is the case of the claimants that the deceased Thanga Meera was engaged in charcoal business and he was also acting as a Contractor to supply labourers to the landlords at the time of sowing and harvesting paddy and thereby, he was earning Rs.10,000/- per month. However, on 30.06.2002, while he was travelling in a Tractor bearing registration No.TN55 F3443, owned by the first respondent, met with an accident and succumbed to the injuries on 03.07.2002. It is the further case of the claimants that the first respondent as owner and the second respondent as insurer of the offending vehicle are liable to pay compensation.



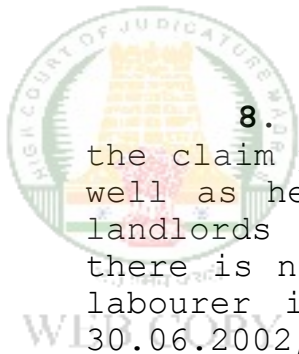
3. The claim petition was opposed by the second respondent - Insurance Company disputing their liability to pay compensation. It is further stated in the counter that the Tractor was to be used only for agricultural purposes as per the registration certificate issued by the Regional Transport Officer and the sitting capacity of the Tractor is one i.e. for the Driver, but the Tractor was used for carrying unauthorized passengers, which is a clear violation of the policy conditions and the registration certificate.

4. The parties have adduced oral and documentary evidence. After analyzing the evidence adduced by the parties, the Tribunal awarded a sum of Rs.3,20,000/- together with interest at the rate of 7.5% per annum as compensation to the claimants. However, the Tribunal came to the conclusion that since the accident occurred only due to the negligence of the driver of the Tractor and the deceased was travelling as a gratuitous passenger, the second respondent - Insurance Company cannot be made liable to pay compensation. Challenging the liability fastened on the owner of the offending vehicle, this civil miscellaneous appeal has been filed.

5. It is the contention of Mr.R.P.Ramachanthiran, learned counsel appearing for the appellants - claimants that the Tribunal erred in fastening the liability on the owner of the vehicle and exonerating the Insurance Company from paying the award amount, which is quite opposite to law and facts of the case as well. The Tribunal ought to have held that the deceased was thrown away from the Tractor and as soon as he fell down, he became a third party and thereafter only, the Tractor overturned on him and hence, the deceased should be treated as a third party. He further added that there is no material to show that the deceased was a gratuitous passenger at the time of accident and hence, the second respondent - Insurance Company has to be made liable to pay the compensation.

6. Per contra, the learned counsel appearing for the second respondent - Insurance Company would submit that the pleadings itself would show that the deceased travelled in the offending vehicle as a gratuitous passenger at the time of accident. But, in the evidence, the claimants have taken a contrary stand to the effect that the deceased travelled in the offending vehicle as a labourer. The Tribunal, after appreciating the evidence adduced by the parties, has rightly exonerated the second respondent - Insurance Company from paying the award amount and hence, prayed for dismissal of the appeal.

7. Heard Mr.P.R.Ramachanthiran, learned counsel appearing for the appellants, Mr.S.Badrinath, learned counsel appearing for the first respondent and Mr.J.S.Murali, learned counsel appearing for the second respondent and perused the materials available on record.



8. In the matter on hand, it is stated by the claimants in the claim petition that the deceased was doing charcoal business as well as he was acting as a Contractor to supply labourers to the landlords at the time of sowing and harvesting paddy. However, there is no pleading to the effect that the deceased was working as labourer in the agricultural land. It is further seen that on 30.06.2002, the offending vehicle was engaged by one Mahalingam for transporting paddy crops and even as per the averments, when the vehicle was returning after unloading the paddy crops, the deceased travelled in the offending vehicle. So, the findings of the Tribunal that the deceased cannot be treated as a third party do not warrant interference of this Court. Further, it is seen that the Tribunal following the decisions of the Apex Court in ***The New Indian Insurance Company vs. Darshana Devi and others [(2008) 2 MLJ 1175]*** held that since the accident occurred only due to the negligence of the driver, the first respondent - owner of the offending vehicle is liable to pay the compensation amount to the claimants. It is well settled that the gratuitous passengers travelling in a goods carriage are not entitled for compensation from the insurer. In view of the above facts and circumstances of the case, I do not find any valid ground to interfere with the Award passed by the Tribunal and hence, the civil miscellaneous appeal deserves to be dismissed.

9. Accordingly, the civil miscellaneous appeal is dismissed.
No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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

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To:

1.The Additional District Judge,
Motor Accident Claims Tribunal,
(Fast Track Court), Pudukkottai.

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2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to Mr.J.S.MURALI, Advocate (SR-3244[F] dated 04/02/2021)

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VB (03.03.2021) 4P 5C