

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	05.03.2021
Date of Judgment	09.06.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.281 of 2013andMP(MD)No.1 of 2013

Branch Manager,
Cholamandalam MS General Insurance
Company Limited, Chennai.

: Appellant/2nd Respondent

Vs.

1.Valli @ Valliammal
2.Raja @ Rajeswaran

: R1/Petitioner
: R2/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act against the award, dated 24.04.2012 made in WC No.126 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan

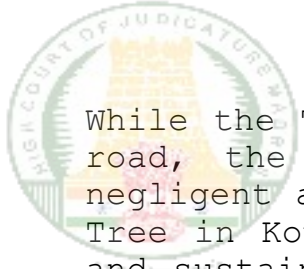
For 1st Respondent : Mr.L.Jeen Felix
(Legal Aid Counsel)

For 2nd Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the award, dated 24.04.2012 made in WC No.126 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul.

2.The first respondent/petitioner is the owner-cum-driver and the appellant/2nd respondent is the insurer of Tractor TN-47-Z-4281 which is involved in the accident. On 22.05.2009 at about 8.30 hours, the 1st respondent was driving the Tractor TN-47-Z-4281 along with trailer TN-47-Z-4260 for taking the waste for the agricultural purpose in which the petitioner Valli (a) Valliamman and others being the load man accompanied with him and they were sitting on the above said Tractor, as they were engaged for doing coolie works.



While the Tractor was proceeding in Chithalavai to Latchumanampatti road, the driver of the tractor drove the same in a rash and negligent and zig-zag manner and as a result which, near the Banian Tree in Kovakkulam, the petitioner fell down from the said vehicle and sustained grievous injuries in her head and all over the body. Immediately she was taken to Dr.G.C. Orthopedic & Trauma Centre, Karur, where she was taking treatment as inpatient from 22.05.2009 to 02.06.2009 and surgery was undertaken. The injured claimant filed a claim petition in WC No.126 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Dindigul, seeking compensation of Rs. 5,00,000/- for the injuries sustained by her in the accident.

3.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the tractor was responsible for the accident and the claimant was a load man in the offending vehicle and awarded compensation of Rs.1,13,864/- Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

5.At the time of admission, the following substantial questions are framed for consideration:-

(i)Whether the learned Commissioner is entitled to direct the insurance company to indemnify the owner of the vehicle in a case where the alleged workman travelled in the mud-guard of the tractor for the reason that such a class of passenger is an unauthorized/gratuitous passenger and there is no coverage of insurance for such a class of people?

(ii)Whether the learned Commissioner of Workmen Compensation has committed an error by holding that the appellant/Insurance Company is liable to indemnify the owner of the vehicle though there is no coverage of a tractor and a person who was seated on its mud-guard?

(iii)Whether the findings of the learned Commissioner be sustained for the reason that the findings are rendered in gross violation of the ingredients of Section 147 of the Motor Vehicles Act?

(iv)Whether the findings of the Commissioner of Workmen Compensation in his refusal to entertain the defence under the Motor Vehicle Act be sustained in view of the fact that the accident in



question is a motor accident and the policy of insurance is issued under the provisions of the Motor Vehicle Act for a proceeding is under the Workmen Compensation Act?

6. Heard the learned counsel appearing on either side and perused the materials available on record.

Substantial Questions of Law (i) to (iv):-

7. The learned counsel appearing for the appellant Insurance Company argued that at the time of accident, the injured travelled on the mud guard of the tractor and in the tractor, insurance coverage is only for the driver and the injured travelled only as an unauthorized passenger and hence, the Insurance Company is not liable to pay the compensation.

8. In this case, the injured was examined as PW1. In respect of the accident, one Subhurathinam gave Ex.P1 complaint. On perusal of Ex.P1 complaint, it is stated that on the date of the accident, she travelled in the offending vehicle for loading fertilizer for one Raja @ Rajeswaran and she stood on the mud guard of the tractor and at that time, the driver of the tractor drove the tractor in a rash and negligent manner and due to it, she fell down and sustained injuries. To prove that she was load woman under the owner of the vehicle, no document was filed. But on perusal of Ex.P1 and the evidence of PW1, it reveals that at the time of accident, the injured travelled as a load woman. PW1 during her evidence stated that at the time of accident, she travelled in the tractor on the mud guard of the tractor. In the tractor, the seat is designed for the driver alone to sit. On perusal of Ex.R1 Insurance Policy, the premium was paid only for the driver. No additional premium was paid for the employee by the owner of the vehicle. It is needless to say that permitting the persons to travel in the mud guard amounts to violation of policy condition. Due to the travel in the mud guard of the tractor leads to un-control driving of the driver. Hence, the appellant Insurance Company is not liable to pay the compensation and only the owner of the vehicle is liable to pay the compensation to the injured. Accordingly, the substantial questions of law are answered in favour of the appellant Insurance company.

9. In the result, the Civil Miscellaneous Appeal is **allowed** by setting aside the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay the award. It is open to the claimant to claim the award amount, which was awarded by the Tribunal, from the owner of the offending vehicle by filing appropriate proceedings, in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount already



deposited, if any, before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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Note :

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

The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Dindigul.

Copy to:

The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-19150[F] dated 10/06/2021)

C.M.A(MD) No.281 of 2013
09.06.2021

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