BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.02.2021
Date of Judgment	27.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.332 of 2016

The New India Assurance Company Limited,
Rep. By its Branch Manager,
No.34, Azhagarkoil Road,
Thallakulam,
Madurai. : Appellant/2nd Respondent

Vs.

1.Ramar
2.Shanmugavalli
3.Ariyanatchi
4.Kannammal
5.Pathirakali
6.Mariammal
7.Muniasamy
8.Govindan : Respondents/Petitioners
9.Karuppuchamy : Respondent 9/ Respondent 1

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Sub Court), Paramakudi, made in MCOP No.51 of 2010, dated 31.10.2011.

For Appellant : Mr.N.Dilip Kumar
For Respondents : Ex-parte
Vide order, dated 11.01.2018

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Sub Court), Paramakudi, made in MCOP No.51 of 2010, dated 31.10.2011.

2.The short facts of the case is that on 28.07.2003 when the deceased Petchiammal was travelling in a tractor TN-65-D-2340 attached with trailer TN-65-4573, the driver of the same drove it in a rash and negligent manner and thereby the trailer capsized and the deceased sustained fatal injuries. Immediately, the deceased was taken to Paramakudi Government Hospital and thereafter, she was taken to Madurai Meenakshi Hospital for treatment, however, she succumbed to injury in the hospital. The legal heirs of the deceased Petchiammal filed a claim petition seeking compensation of Rs.5,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 48 years at the time of accident and she was working as Agriculture Coolie, thereby she was earning Rs.3,000/- per month. It is alleged that the said Petchiammal died only due to the negligence of the driver of the offending vehicle.

4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 1 witness was examined and marked 8 documents. On the side of the Appellant Insurance Company, 1 witness was examined and 3 documents were marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.2,66,000/- together with interest @ 7.5% p.a directing the appellant Insurance Company to pay the compensation amount to the claimants and then recover the same from the owner of the offending vehicle. Aggrieved over the same, the appellant Insurance Company is before this court.

7.Heard the learned counsel appearing for the appellant and perused the materials available on record.

8.In this case, the dispute is in respect of the liability. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that the deceased had travelled as a passenger in the trailer and there is no insurance coverage for the trailer and hence, the Insurance Company is not liable to pay the compensation. For that, the learned counsel appearing for the appellant submitted the decision reported in **2008(2) TN MAC 355 (The Divisional Manager, The New India Assurance Company Limited, Thanjavur Vs. Vinayaga Moorthi and others).**

9.It is the case of the respondents/claimants that only due to the negligent driving of the tractor driver, the accident occurred and the offending vehicle has insurance coverage at the time of the accident and hence, the Insurance Company is liable to pay the compensation.

10.It is not in dispute that at the time of accident, the deceased was travelled in the trailer and the tractor has insurance coverage and the trailer has no insurance coverage at the time of accident. In respect of tractor and trailer, there was separate insurance coverage for both tractor and trailer. It is to be noted that already the Insurance Company issued notice to the owner of the offending vehicle to produce the driving licence of the driver and insurance policy of the offending vehicle. But after receipt of the notice sent by the Insurance Company, the owner of the offending vehicle has not produced the insurance policy in respect of the trailer. Hence, it reveals that at the time of accident, the trailer has no insurance coverage. Without insurance, the owner permitted the offending vehicle to ply, which amounts to violation of policy condition. In this case, there was insurance coverage only for the tractor and not for the trailer. In this case, the deceased travelled only in the trailer at the time of the accident. Hence, it is held that the appellant Insurance Company is not liable to pay the compensation to the claimants and only the owner of the trailer is liable to pay the compensation to the claimants.

11.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 claimants 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.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,

1.The Motor Accident Claims Tribunal/
Sub Court, Paramakudi.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-17690[F] dated 27/04/2021)

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27.04.2021

VR(CO)
KK(27.05.2021) 3P 5C