

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	02.02.2021
Date of Judgment	20.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.713 of 2013

and MP(MD)No.1 of 2013

A.Kallathi Periyakaruppan : Appellant/1st Respondent

Vs.

1.S.Sangaiah

2.S.Santhini

3.Minor S.Sangeetha

4.Minor S.Shanthi

5.Minor S.Saratha

(Minors 3 to 5 are represented by
their natural guardian and father
1st respondent herein)

: R1 to R5/Petitioners

6.The Branch Manager,

Bajaj Allianz General Insurance Company Limited,
KMA Complex 1st Floor,
12-G, Ram Nagar,
Madurai.

: 6th Respondent/2nd Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No.1540 of 2004 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Madurai, dated 05.09.2007.

For Appellant : Mr.D.Venkatesh

For R1 to R5 : Mr.R.Pon Karthikeyan

For 6th Respondent : Mr.S.Srinivasa Raghavan

J U D G M E N T

This appeal has been filed challenging the judgment and decree made in MCOP No.1540 of 2004 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Madurai, dated 05.09.2007.



2.The brief facts of the case is that on 20.02.2004, the deceased S.Sivasangar was working as a load man in the Tractor TN-59-R-6194 and trailer TN-59-R-6295 and loaded the wet-grass in the tractor and in order to unload the same, the deceased travelled in the tractor-trailer. When the tractor was nearing at Kodikulam Villakku at Chithambarampatti to Kodikulam Road, due to the rash and negligent driving of the tractor and due to the jerking and Jolting of the tractor, the deceased was thrown away from the tractor-trailer and hit against the road and sustained grievous injuries like fracture on head and injuries all over the body. Immediately the deceased was taken to the Government Rajaji Hospital at Madurai and admitted as in patient. While the treatment was going on, the deceased died in the hospital. A claim petition was filed by the legal heirs of the deceased claiming compensation of Rs.6,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 15 years at the time of accident and he was working as a load man, thereby he was earning Rs.4,000/- per month. It is alleged that the said Sivasangar died only due to the negligence on the part of the driver of the offending vehicle.

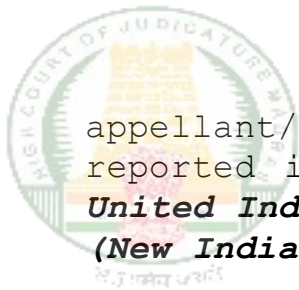
4.In the counter filed by the 6th respondent Insurance Company/2nd respondent, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 4 documents. On the side of the 2nd respondent Insurance Company, one witness was examined and 2 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.2,32,000/- together with interest @ 7.5% p.a. Aggrieved over the same, the present appeal is filed.

7.Heard both sides and perused the materials available on record.

8.The learned counsel appearing for the appellant/1st respondent submitted that at the time of accident, the deceased was travelling as an attendant and there was insurance coverage for the offending vehicle and the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle and the Insurance Company is liable to pay the compensation. For that, the learned counsel appearing for the



appellant/1st respondent submitted the following the rulings reported in **2016(1) TN MAC 214 (SC) (Fahim Ahmad and others vs. United India Insurance Co. Ltd and others) and 2014(1) TN MAC 436 (New India Assurance Co. Ltd., Vellore and Raman and two others).**

9.The main contention raised on the side of the 6th respondent Insurance Company/2nd respondent is that at the time of accident, the deceased was travelling only as a gratuitous passenger and hence, their Insurance Company is not liable to pay the compensation.

10.On the other hand, the learned counsel appearing for the respondents 1 to 5/claimants argued that at the time of accident, the deceased was working as a load man and the accident had occurred due to the rash and negligent driving of the offending vehicle and the 6th respondent Insurance Company/2nd respondent is liable to pay the compensation to the claimants.

11.In this case, on the side of the claimants, it is stated that at the time of accident, the deceased has travelled only as a load man in the offending vehicle. But the learned counsel appearing for the appellant/1st respondent submitted that at the time of accident, the deceased was working as an attendant in the offending vehicle. Before the tribunal, the 1st respondent remained ex-parte. The claimants have not taken any steps to examine the employer to prove the occupation and income of the deceased. Now in this appeal, the appellant/1st respondent stated that at the time of accident, the deceased was an attendant.

12.It is an admitted fact that at the time of accident, the age of the deceased was 15 years. Hence, employing a minor is an offence. Further, the offending vehicle is a tractor coupled with trailer. The tractor with trailer can be used only for agricultural purpose. The offending vehicle is not a goods vehicle. Further, as per Rule 412 of the Tamil Nadu Motor Vehicles Rules, a person more than 20 years is eligible for doing attendant work in a tractor and trailer. But in this case, the age of the deceased is 15 years at the time of the accident. Hence, there is no chance for the deceased to work as attendant in the offending vehicle. No document was filed on the side of the claimants to prove that at the time of accident, the deceased was the attendant of the tractor and trailer. Hence, the evidence of PW1 stating that at the time of accident, the deceased was travelling as a load man and hence, the Insurance Company is liable to pay the compensation is not at all acceptable. Hence, the tribunal has correctly come to the conclusion that at the time of accident, the deceased is a gratuitous passenger. Therefore, it is not necessary to interfere with the findings of the tribunal.



13.In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-)

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/ /2021

Sub Assistant Registrar(CS)

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To,

1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Madurai.

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-16777[F] dated 21/04/2021)

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-16668[F] dated 20/04/2021)

Judgement made
in CMA(MD)No.713 of 2013
20.04.2021

ma(CO)

TR(18.05.2021) 4P 6C