



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020

Pronounced On : 29.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.795 of 2016

and

C.M.P. (MD)No.7665 of 2016

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Branch Manager,
United India Insurance Company Limited,
4-1-169 Dindigul Road,
Oppo. To Chidambaram Petrol Bunk,
Batlagundu,
Dindigul District. 624 202. : Appellant / 2nd Respondent

Vs.

1.Thirumalaichamy : 1st Respondent /1st Petitioner
2.Kaveriammal : 2nd Respondent / 2nd Petitioner
3.K.Muthu : 3rd Respondent / 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 05.05.2016 of the Commissioner for Workmen's Compensation, Dindigul passed in W.C.No.147 of 2008.

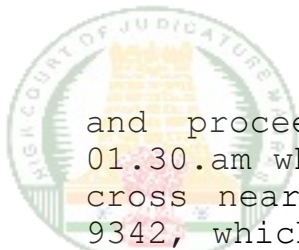
For Appellant : Mr.C.Jawahar Ravindran
For R1 and R2 : Mr.J.Gunaseelan Muthiah
For R3 : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923, challenging the order dated 05.05.2016, made in W.C.No.147 of 2008 passed by the Commissioner for Workmen's Compensation, Dindigul.

2.The Appellant/insurer, who was made liable to pay compensation of Rs.4,08,198/- to the claimants, who are the legal heirs of the deceased Siva, who died in an accident occurred on 19.03.2007, challenged the liability mulcted on it.

3.The case of the claimants is that their son Siva was working as a load-man under the third respondent/first respondent in his tractor bearing Registration No.TN 65 E 3197, that on 18.03.2007 at about 11.30.am, random rubble stones were loaded from Narioothuparai



and proceeded towards Pallapatti, that on 19.03.2007 at about 01.30.am when the tractor was proceeding in front of Pottisettipatti cross near Ammaiyanakanur, a Bus bearing Registration No.TN 07 N 9342, which came behind the tractor in a rash and negligent manner, dashed against the tractor and as a result of which, the load-man Siva sustained serious head injuries and multiple injuries all over his body, that he was immediately taken to Rajarajeswari Nursing Home, Dindigul and was admitted as an inpatient and that despite treatment, he succumbed to the injuries on 24.03.2007.

4.It is their main case that the accident was occurred, when the said Siva was in the course of employment in pursuance of the contract of employment under the third respondent/first respondent, that since the tractor owned by the third respondent was duly insured with the Appellant/second respondent, both are jointly and severally liable to pay compensation.

5.The defence of the Appellant/insurer is that the deceased Siva had not travelled in the tractor of the third respondent as a load man, but travelled in it as an unauthorized passenger and therefore, the insurer is not liable for the claim and that the compensation claimed is highly excessive and out of proportion.

6.During enquiry before the Commissioner for Workmen's compensation, the claimants have examined the first claimant Tmt.Selvarani as P.W.1 and exhibited six documents as Ex.P.1 to Ex.P.6. The third respondent/first respondent owner of the tractor had remained ex-parte before the Tribunal. On the side of the Appellant/insurer, their Senior Assistant, Tmt.Vijayalakshmi, has been examined as R.W.1 and exhibited three documents as Ex.R.1 to Ex.R.3.

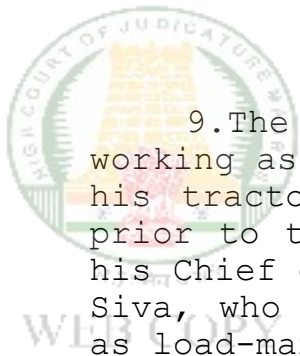
7.The learned Commissioner, upon considering the evidence both oral and documentary, has passed the impugned order mulcting liability on the Appellant/insurer and directing them to pay compensation of Rs.4,08,198/- to the claimants. Aggrieved by the said order, the insurer has come forward with the present appeal.

8.The appeal was admitted on the following substantial questions of law :

"1.Whether the learned Commissioner is wrong in holding that there was employer-employee relationship between the deceased and the third respondent?

2.Whether the Commissioner failed to hold that there was no insurance coverage for the load man in the Tractor?

3.Whether the learned Commissioner has failed to hold that the third respondent has violated the terms and conditions of the insurance policy?



9.The claimants' specific case is that their son Siva was working as a load man under the third respondent/first respondent in his tractor bearing Registration No.TN 65 E 3197 for three years prior to the accident. No doubt, P.W.1, father of the deceased, in his Chief examination affidavit, would say in para No.2 that his son Siva, who died in the accident occurred on 18.03.2007, was working as load-man under the third respondent/first respondent for the past two years and in cross examination, he would admit that except his words, there are no other proof to show that his son was working under the third respondent/first respondent.

10. It is evident from the records that after the accident, complaint was lodged by one Davidraj, alleged to be the driver of the tractor at the time of accident. As rightly contended by the learned counsel for the Appellant, the driver in his complaint lodged with the police, has nowhere whispered that the deceased Siva was working under the third respondent/first respondent, nor the deceased Siva was travelling as a load-man in the said tractor at the time of accident. In Ex.P.1/FIR, the driver would only refer the deceased Siva as his 'neighbor' and not as a 'load man', nor as an 'employee' of the third respondent/first respondent. It is pertinent to note that the claimants have not chosen to examine the third respondent, owner of the tractor nor the driver of the tractor, who lodged the complaint to the police.

11.During cross examination of P.W.1, a suggestion was put to him by the insurer side, that the factum of his son working under the said Muthu can be ascertained by examining the said Muthu, he would reply that he is not willing to examine the owner. The claimants have not offered any acceptable reason or explanation for non examination of the owner and driver of the tractor.

12.Though the claimants in their petition have alleged that the deceased Siva was drawing daily salary between Rs.200/- and Rs.250/- and daily batta at Rs.30/-, they have not produced any materials to substantiate the same. As already pointed out, the third respondent, owner of the tractor had remained ex-parte before the Tribunal and despite the service of notice, he has not entered into appearance before this Court. As rightly contended by the learned counsel for the Appellant, there is absolutely no evidence to show that there existed employer - employee relationship between third respondent/first respondent and the deceased Siva. But the tribunal in its order, without referring anything, has straightaway come to the decision that there existed relationship of employer and employee and that the said Siva while working as load - man in the tractor owned by the third respondent, died on 18.03.2007 in the accident occurred in the course of the employment.

13. Considering the above, this Court has no hesitation to hold that the claimants have miserably failed to prove that the deceased



Siva was working as load man under the third respondent and there existed relationship of employer and employee between them. Consequently, the first substantial question of law is answered in favour of the Appellant.

14. According to the claimants, the deceased Siva was travelling as load man in the tractor owned by the third respondent, which was driven by one Davidraj. Admittedly, the said tractor was not at all attached with a trailer or trolley at the time of accident. Before entering into the further discussion, it is necessary to refer the decisions relied on by the learned counsel for the Appellant;

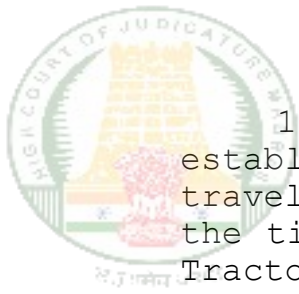
(i) 2011 (1) TN MAC 636:

Oriental Insurance Company Limited Vs. Chitra and others :

"14. In National Insurance Co. Ltd., v. Durga Prasad & others, AIR 2008 (NOC) 1437 (M.P): 2008 (4) ABR (NOC) 694 (M.P), also the liability of the Insurer was questioned. The deceased was travelling sitting on bonnet of Tractor from where he had fallen down and died. The tractor was insured covering the risk of driver, owner and third party. Passenger or labourer travelling in such vehicle could not be treated as third party for the purpose of Insurance unless their risk is covered under Policy by receiving additional premium for in this regard. According to such Policy, neither additional premium for any passenger or labourer was paid nor the same was received by Insurer. In this circumstance, it was held that the liability of the passenger cannot be saddled with the Insurer.

15. In National Insurance Co. Ltd., Thanjavur V. Pavunammal, AIR 2009 (NOC) 616 (Mad) also it is held that the insurer not liable to pay compensation for the tortious act committed by the owner of the vehicle.

16. In an another decision in United India Insurance Co. Ltd. v. Smt. Anguri Devi and others, 2010 (1) TAC 136 (M.P), the deceased was travelling in a Tractor which turned turtle. The Tractor was insured for agricultural purpose. It is also the case of the Claimants that the deceased was died due to rashness and negligent driving of the tractor driver, but the Tribunal has awarded a sum of Rs. 3,60,000/- after fixing the liability on the driver, owner and Insurer. It was held that admittedly the Tractor was insured for agricultural purpose and not for carrying passenger. Under this circumstance, it was held that the Insurer is not liable to pay compensation for the person who suffers injuries while travelling as passenger in the Tractor.



17. On coming to the instant case on hand, it is established that the deceased Subburamu @ Subburaman was travelling in the Tractor. It is also established that at the time of accident, the trailer was not attached with the Tractor. The evidence of PW 2 cannot be tagged with credit worthiness because the man, who lodged the Complaint himself was travelling in the tractor. The evidence of PW 2 seems to be artificial and cooked up for the purpose of getting compensation to the Claimants from the Insurance Company.

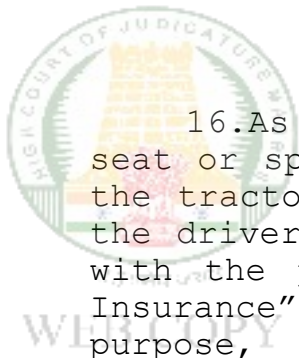
18. On the basis of the materials available on record and other circumstance, it is unambiguously established that the deceased was travelling in the Tractor and while he was trying to get down from the Tractor, the driver had moved the vehicle at fast and hence, the deceased caught himself in the back wheel of the Tractor and lost his life for which the Insurance Company cannot be held liable, on the other hand, the owner of the vehicle alone is liable."

(ii) **2017 (1) TN MAC 662 :**

C.Pinniammal Vs. Jakkammal and others:

"10. In this case, the Tractor alone has been used without a Trailer and therefore, it is evident that the said four persons should have travelled as Gratuitous passengers and not as Coolies and only the Third parties are entitled for Compensation, apart from the coverage of the Driver of the Tractor-Trailer. In the case on hand, the deceased travelled along with three other persons. Therefore, it is a violation of Policy conditions and therefore, the Tribunal rightly held that the Tractor cannot be termed as a Goods vehicle and it is only meant for the Agricultural works and for the persons, who travelled in the Tractor, no compensation can be granted and the said finding is according to law. The Judgments relied upon by the learned Counsel for the Appellant/Owner of the Tractor are with regard to the claims wherein the coolies were in service when the Tractor are with regard to the claims Trailer. Here, the Tractor, alone was used and therefore, the facts of the case in those cases are not applicable and the Judgments were given to the peculiar facts and circumstances of the case therein."

15. The above decisions are squarely applicable to the case on hand. In the present case, the tractor alone has been used without a trailer or trolley. As already pointed out, the driver in his complaint would admit categorically that the deceased Siva had accompanied him in the tractor.



16.As rightly pointed out by the Appellant side, there was no seat or space for any other person, except the driver to travel in the tractor and the deceased should have travelled by sitting near the driver or on mud guard of the tractor. The tractor was insured with the policy under Ex.R.1 and it is a "Farmer S package Insurance". Admittedly, the tractor was insured for agricultural purpose, but as already pointed out, even according to the claimants, the same was used for transporting rubble stones. It is definitely not for carrying any goods nor load-men nor passengers. It is evident from Ex.R.1 policy that the tractor was insured covering risk of driver, owner and third parties.

17.Considering the above, it is very much clear that the owner in violation of policy conditions, has used the tractor for non agricultural work and that there was no insurance coverage for the load man. Hence the decision of the Tribunal mulcting liability on the insurer is legally unsustainable and the same is liable to be set aside and accordingly, the substantial questions of law 2 and 3 are also answered in favour of the Appellant.

18.Consequently, this Court concludes that the appeal is liable to be allowed by setting aside the order dated 05.05.2016, passed in W.C.No.147 of 2008 on the file of the Commissioner for Workmen's Compensation, Dindigul. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

19.In the result, this Civil Miscellaneous Appeal is allowed and the order dated 05.05.2016, passed in W.C.No.147 of 2008 on the file of the Commissioner for Workmen's Compensation, Dindigul is set aside. The Appellant/insurer is permitted to withdraw the amount deposited before the Tribunal with accrued interest on due application. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1.The Commissioner for Workmen's Compensation,
Dindigul

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



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

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+1 CC to Mr.P.SENTHOOR PANDI, Advocate(SR-2434[F] dated 29/01/2021)

order made in
C.M.A(MD)No.795 of 2016
and
C.M.P. (MD)No.7665 of 2016
29.01.2021

VB (09.02.2021) 7P 5C