



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

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|---------------------|------------|
| Date of Reservation | 29.01.2021 |
| Date of Judgment    | 17.04.2021 |

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**CORAM:**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.102 of 2015

and

MP(MD)No.2 of 2015

The Divisional Manager,  
M/s.United India Insurance Company Limited,  
Divisional Office,  
7-A, West Veli Street,  
Madurai.

: Appellant/3<sup>rd</sup> Respondent

Vs.

1.M.Alagu : 1<sup>st</sup> Respondent/Petitioner  
2.G.Velayuthan : 2<sup>nd</sup> Respondent/R1  
3.The Divisional Manager,  
M/s.Tata AIG General Insurance Company Limited,  
No.1, Ethiraj Salai,  
Egmore, Chennai. : 3<sup>rd</sup> Respondent/R2

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 30 of workmen Compensation Act against the award, dated 03.01.2013 (which was signed by the Authority on 04.04.2013) made in W.C No.196 of 2009 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.J.S.Murali

For 1<sup>st</sup> Respondent : Mr.A.Theethar

For 2<sup>nd</sup> Respondent : No appearance

For 3<sup>rd</sup> Respondent : Mr.S.Srinivasa Raghavan

**JUDGMENT**

Challenge made in this appeal is to the award, dated 03.01.2013 in W.C No.196 of 2009 by the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.



2.The claimant was working as a load man employed by the 1<sup>st</sup> respondent in his Tractor TN-63-J-3386 and Trailer TN-63-H-2484. On 17.06.2009 at about 13.00 hours, when the above vehicle was proceeding on Padamathur to Thiruppachethi Main road, near Pachari Vilakku Road, Pillaiyar Kovil, it met with the accident. In the accident, the claimant sustained injuries and immediately, he was admitted in the Rajaji Government Hospital, Madurai, where he was taking treatment as inpatient between 17.06.2009 and 30.06.2009. The injured claimant filed a claim petition seeking compensation of Rs.6,00,000/- on the ground that the driver of the tractor was responsible for the accident.

3.The claimant has stated that at the time of the accident, his age was 35 and was earning Rs.5,500/- per month. A criminal case in Crime No.148 of 2009 was registered against the driver of the offending vehicle by Thiruppachethi Police, Sivagangai District.

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

5.The learned Deputy Commissioner for Workmen Compensation, Madurai, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the tractor was responsible for the accident and awarded compensation of Rs.2,64,849/- and directed the appellant Insurance Company to deposit the said amount within a period of 30 days from the date of the receipt of a copy of the order, failing which, the appellant Insurance Company shall deposit the compensation amount together with interest at the rate of 12% from the date of the accident till the date of deposit. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

6.This appeal is admitted on the following question of law:-

***"Whether the appellant Insurance Company alone shall be made to pay the entire liability and as to whether the third respondent Insurance Company, to which the Tractor was insured is also entitled to pay 50% of the amount?"***

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

8.The learned counsel appearing for the appellant/3<sup>rd</sup> respondent argued that the 1<sup>st</sup> respondent/claimant travelled in the tractor and not in the trailer and he had fallen down from the



tractor and sustained injuries and therefore, the appellant/3<sup>rd</sup> respondent is not liable to pay the compensation, since the accident was only because of the rash and negligent driving by the driver of the tractor and prays that the Civil Miscellaneous Appeal may be allowed.

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9. On the other hand, on the side of the first respondent/claimant, it is submitted that there was employer-employee relationship between the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent and the 1<sup>st</sup> respondent/claimant and the trailer cannot be operated without the tractor and the accident had occurred due to the rash and negligent driving of the driver of the tractor and both the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent and the 3<sup>rd</sup> respondent/2<sup>nd</sup> respondent are liable to pay compensation.

10. In this case, the tractor was insured with the 3<sup>rd</sup> respondent/1<sup>st</sup> respondent Insurance Company and the trailer was insured with the appellant/2<sup>nd</sup> respondent Insurance Company. The main contention of the appellant/3<sup>rd</sup> respondent is that there is no employer-employee relationship between the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent/claimant. But the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent has not chosen to appear before the tribunal to prove that there was no employer-employee relationship between the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent and the 1<sup>st</sup> respondent/claimant. Further, on perusal of Ex.P1, it is stated that at the time of occurrence, the claimant travelled in the trailer as a load man of the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent. The fit person to say that the claimant is not working under him, is the owner of the tractor. But the owner of tractor has not chosen to appear before the court. Hence, it is presumed that the owner of the tractor admitted that at the time of accident, the claimant is working him as a load man.

11. The next contention raised on the side of the 1<sup>st</sup> respondent/claimant is that without a tractor, trailer can not be operated and hence, both the Insurance Companies for tractor and the trailer are jointly and severely liable to pay the compensation. It is true that a trailer cannot be operated without the tractor. It is admitted fact that at the time of occurrence, the claimant travelled as a load man in the trailer. As per Ex.P1, it reveals that only due to the rash and negligent driving of the tractor, the accident occurred and thereby, the claimant had sustained injury, when he was in the trailer. But the tribunal has fastened the entire liability only on the appellant Insurance Company of the trailer, which is not correct. As the trailer cannot be operated without tractor, it is held that both the Insurance Companies for tractor and the trailer are liable to pay the compensation in the ratio of 50:50 to the claimant. In other aspects, the findings of the tribunal is confirmed. Accordingly, the substantial question of law is answered.



12.In the result, this Civil Miscellaneous Appeal is partly allowed. Both the appellant Insurance Company as well as the 3<sup>rd</sup> respondent Insurance Company are liable to pay the compensation amount as awarded by the tribunal at the ratio of 50:50. It is seen from the records that the appellant Insurance Company has already deposited the entire award amount before the Deputy Commissioner of Labour, Madurai. Hence, the 3<sup>rd</sup> respondent Insurance Company alone is directed to deposit their share of 50% of the award amount before the Deputy Commissioner of Labour, Madurai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit is being made, the 1<sup>st</sup> respondent/claimant is entitled to get the entire award amount by filing necessary application. As the appellant Insurance Company has already deposited the entire award amount before the Deputy Commissioner of Labour, Madurai, they are entitled to get back the 50% of the deposited amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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**To**

1.The Deputy Commissioner of Labour, Madurai.

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

+1 CC to M/s.J.S.MURALI, Advocate ( SR-16365[F] dated 19/04/2021 )

C.M.A(MD)No.102 of 2015  
17.04.2021

SGS(CO)

TR(06.05.2021) 4P 5C