BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 19.07.2021
Delivered on : 27.08.2021
CORAM:
THE HONOURABLE MRS.JUSTICE R.THARANI
C.M.A(MD) No.1179 of 2018
and
C.M.P.(MD)Nos.12126 of 2018 and 7661 of 2019

THE BRANCH MANAGER,,
NEW INDIA ASSURANCE COMPANY LTD P.P.K.,
COMPLEX 1ST FLOOR 3548/2 3549/1 2 SOUTH ,
RAJA ST PUDUKOTTAI. ... Appellant/ 2nd Respondent

Vs

1.SHANTHI,

2.MINOR MANO,

3.MINOR RAMA, ... Respondent 1 to 3/Petitioners

4.S.VELLAISAMY, ... 4th Respondent/ 1st Respondent

5.THE BRANCH MANAGER,
NATIONAL INSURANCE CO LTD, MADURAI, MADURAI,
MADURAI,DT. ... 5th Respondent/ 4st Respondent
C.K.Thirumeni Devar(Died)

6.SIVALINGAM,

7.SIVAMURUGAN, ... 6th & 7th Respondents/5th & 6th Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.08.2018 made in M.C.O.P.No.197 of 2007 on the file of the Motor Accident Claims Tribunal Special Court, EC and NDPS Cases, Pudukkottai.

For Appellant	: Mr..D.Malaichamy
For R1 to R3	: Mr.K.C.Maniyarasu
For R5	: Ms.P.Malini
For R6	: Mr.K.Hema Karthikeyan
For R7	: Mr.A.Sivasubramanian
For R4	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award in M.C.O.P.No.197 of 2007 on the file of the Special Court for E.C. and N.D.P.S. Cases, Pudukkottai.

2.The appellant herein was the second respondent and the respondents 1 to 3 herein were the claimants, the fourth respondent herein was the first respondent, the fifth respondent was the fourth respondent, respondents 6 and 7 herein were the respondents 5 and 6 in the original petition. Respondents 1 to 3 herein filed a petition in M.C.O.P.No197 of 2007.

3.Brief substance of the petition in M.C.O.P.No197 of 2007, is as follows:

On 01.10.2006, at about 4.00 p.m., when the deceased Marimuthu, was travelling in a trailer bearing Registration No.TN-59-B-5268, attached with the Tractor bearing Registration No.TN-55-M-5398, that belong to the respondents 1, 3, 5 and 6. The Tractor was driven by its driver in a rash and negligent manner and the deceased fell down and sustained fatal injuries and succumbed to death. The petitioners / claimants are the legal representatives of the deceased and they claimed a sum of Rs.10,00,000/- as compensation.

4.Brief substance of the counter filed by the second respondent, in M.C.O.P.No197 of 2007, is as follows:

The respondent denied the age, occupation, income of the deceased. The mode of accident has to be proved. The first respondent's driver drove the vehicle in a careful and slow manner, observing the traffic rules, in a normal speed. The Trailer was not insured. There was no privity of contract between the second respondent and the first respondent, regarding the Trailer. This respondent is not a necessary party to the proceedings. The deceased fell down from the Trailer. The petitioners have not impleaded the owner and the insurer of the Trailer. The claim is not maintainable on the ground of non-joinder of necessary parties. The first respondent has violated the policy conditions. The seating capacity of a Tractor is only for the driver. Extra premium was not paid for load men and the respondent is not liable to pay compensation.

5.Brief substance of the counter filed by the fourth respondent, in M.C.O.P.No197 of 2007, is as follows:

The Trailer was not insured with this respondent. There is no insurance coverage for the Trailer. Policy number and the period of policy coverage were not mentioned. The third respondent vehicle was not insured. Age, Income and Status of the deceased are all denied. The claim is excessive.

6.Three witnesses were examined and seven documents were marked on the side of the petitioners. Two witnesses were examined and three documents were marked on the side of the respondents.

7.After hearing both sides, the Tribunal awarded a sum of Rs.6,10,000/- as compensation. Against the same, the appellant preferred the appeal on the following grounds:-

The Tribunal failed to consider that the Trailer was not at all insured with the appellant and there cannot be any contract of indemnity. The deceased travelled as a gratuitous passenger in an uninsured Trailer. The Tractor was not used for agricultural purpose, at the time of accident. Policy conditions are violated and the appellant is not liable to pay any compensation. The award is excessive.

8.On the side of the appellant, it is stated that the deceased travelled in the Trailer with the other passengers and he fell down and met with an accident. The Tractor was insured with the appellant. Whether the deceased worked as an agricultural Cooli, and whether the Tractor and Trailer were used for agricultural purpose, at the time of accident, were not proved. In the F.I.R, it is stated that five persons travelled in the Trailer. The usage for agricultural work was not mentioned in the F.I.R. The trailer was empty and there was no question of loading. The driver of the Tractor, the owner of the Tractor and the complainant were not examined, to prove agricultural usage. P.W.2 and P.W.3 have deposed regarding the agricultural work, both of them belong to the same village and they were interested witnesses and their evidence is doubtful. The employer of the deceased was not examined and hence, the claimants failed to prove that the deceased worked as an Agricultural Cooli, at the time of accident. The Tractor stand in the name of the sixth and seventh respondents' father. To fix a coverage, both the Tractor and Trailer have to be insured. Negligence was on the part of the owner of the vehicle. Both the owners of the Trailer and the Tractor were responsible, for paying compensation. On the side of the appellant, it is stated that the Tractor owner alone is liable and the insurance company has to be exonerated.

9.A judgment of the High Court of Karnataka at Bangalore reported in ***2008-ACJ-243 [Branch Manager, United India Insurance Co. Ltd., Vs. Shekarappa and others]*** is cited, wherein, it is stated as follows:

> 8*..... The Division Bench of this High Court has held that the tractor is a motor vehicle but the trailer is a goods vehicle. If a trailer is attached to the tractor, then it will become goods vehicle. Otherwise, tractor is separate from trailer. Both tractor and trailer are to be insured as on the date of accident. The policy was in force in respect of the Tractor but not the Trailer. Than the insurer of*

both tractor and the owner of the trailer are to be made as proper parties before the MACT. In the instant case, respondent No. 2 used the uninsured trailer and it was hired to transport the fodder and respondent No. 3 was stated to be a coolie who had sustained the injuries on account of use of the motor vehicle.

10.The learned counsel for the appellant would rely upon the judgments of this Court reported in ***2020 (2)TNMAC-675 [Management, Balaji Allianz General Insurance Company Limited Vs. S.Usha and others]*** and ***2018-ACJ-2109 [Branch Manager, United India Insurance Company Ltd., V. Panjavarnam and others].***

11.On the side of the respondent, it is stated that the deceased travelled in the tractor, negligence of the driver was not disputed by the insurance company in the petition. In the evidence of P.W.1, it was stated that the deceased was an agricultural Coolie. P.W.2 and P.W.3 have deposed that at the time of accident they were returning back, after completing the agricultural works and that there was no necessity for the availability of load in the Trailer. The Insurance Policy covered agricultural Coolie and prayed the appeal to be dismissed.

12.On the side of the appellant, it is stated that the deceased travelled only in the Trailer. F.I.R. was silent as to the agricultural work. There was no insurance policy for the Tractor and the appellant has to be exonerated. On the side of the respondent, it is stated that the deceased was sitting in the Tractor near the driver and he fell down from the Tractor and not from the Trailer.

13.The case of the claimants as narrated in the claim petition is that the deceased travelled in the Trailer. Even in column No.12 of the claim petition, it is admitted that the deceased travelled in the Trailer. Hence, the contention of the claimants is not sustainable.

14.On the side of the seventh respondent, it is stated that the name of the fifth respondent was wrongly stated in the main M.C.O.P. and there are other legal representatives. On the side of the claimants, it is stated that the seventh respondent was set *exparte* before the Tribunal and the seventh respondent is having no *locus standi* to interfere in this Appeal. Particulars of the other legal representatives were not furnished by the seventh respondent.

15.The Trailer was attached with the Tractor at the time of accident and the Tractor belonged to the father of the respondents 6 and 7 herein. The father of the respondents 6 and 7 was impleaded as the third respondent in the original claim petition, since he died, his name was not printed in the Appeal. The fifth respondent herein is the Insurance Company. The claim of the fifth respondent is that there was no insurance policy for the Trailer. Insurance policy of the Tractor were marked as Ex.P7 and Ex.R2. Ex.R3 was marked to the effect that there was no insurance for the Trailer. In view of Ex.R3, it is decided that there was no insurance coverage for the Trailer. Since there is no coverage for the Trailer, it is decided that the fifth respondent / National Insurance Company is not liable to pay compensation to the claimants.

16.A verification of the policy certificate reveals that no premium was paid for load men or an employee of the owner of the Tractor. The deceased travelled in the Trailer attached with the Tractor. A perusal of the policy reveals that there was no insurance coverage for the Trailer. There is no possibility for the Trailer to move without the usage of the Tractor. Hence, it is decided that both the Tractor owner and the owner of the Trailer are liable to pay compensation to the claimants. Since there is no premium paid for the load men, the appellant / New India Assurance Company is not liable to pay compensation.

17.In the above circumstances, it is decided that the respondent 4, 6 and 7 are liable to pay compensation with proportionate interest and 50% of the cost. The fourth respondent is liable to pay 50% of the compensation and the respondents 6 and 7 are liable to pay 50% of the compensation with proportionate interest and 50% of the cost. There is no serious dispute regarding the quantum. The quantum fixed by the Tribunal is confirmed.

18.Hence, this Civil Miscellaneous Petition is allowed. The fourth respondent is directed to deposit 50% of compensation i.e.,Rs.3,05,000/- along with proportionate interest at the rate of 7.5% p.a and the respondents 6 and 7 herein are directed to deposit 50% of compensation i.e.,Rs.3,05,000/- along with proportioned interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with 50% of the cost within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimant / first respondent is permitted to withdraw her respective share with proportionate interest after deducting any amount received by her earlier. The Tribunal is directed to deposit the share of the minor claimants / respondents 2 and 3 in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The Claimants are not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

Ls

TO

The Motor Accident Claims Tribunal Special Court,
EC and NDPS Cases, Pudukkottai.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-27687 dated 31/08/2021)
+1 CC to M/s.P.MALINI, Advocate (SR-27573 dated 27/08/2021)
+1 CC to M/s.K.C.MANIYARASU, Advocate (SR-27694 dated 31/08/2021)

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