



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 21.04.2021
Delivered On : 03.08.2021
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 503 of 2018

1. Murugammal
2. Saravanakumar
3. Sudha

..Appellants/Petitioners

Vs.

1. M. Muthukumar

2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.1, Layola Building,
Salai Road,
Dindigul Taluk,
Dindigul Town,
Dindigul District.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount and fix the entire liability to pay the compensation by the second respondent insurance company by modifying the award and decree made in M.C.O.P.No.74 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Dindigul dated 23.12.2016.

For Appellant	: Mr.A.Saravanan
For 2 nd Respondent	: Mr.K.Bhaskaran
For 1 st Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.74 of 2014 dated 23.12.2016, on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Dindigul.

2. The appellants herein are the petitioners and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.74 of 2014, claiming compensation for the death of one Sivakumar in an accident that took place on 28.01.2010. The Tribunal has awarded a sum of Rs.9,48,000/- (Rupees Nine Lakhs and Forty Eight Thousand only) as compensation. Against which, the appellants herein have preferred this appeal.

3. A brief substance of the claim petition in M.C.O.P.No.74 of
<https://hcservices.ecourts.gov.in/hcservices/>



2014 is as follows:

On 28.01.2010, at about 2.45 a.m., while the deceased was returning after supplying milk in a van bearing registration No.TN-57-F-6654. The driver of the van drove the vehicle in a rash and negligent manner and dashed against a lorry bearing registration No.TN-57-W-9390, which was parked on the left side edge of the road. The deceased died on the spot. The deceased was working as a helper in the KC milk company and was earning Rs.200/- per day. The claimants are the dependants of the deceased and they claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

A water tank lorry bearing registration No.TN-57-W-9390 was responsible for the accident. The owner of the lorry and the insurance company of the lorry are necessary parties. The petitioners 2 and 3 are married and they are not depending on the income of the deceased. The driver of the first respondent van was not having valid driving licence. The deceased was travelling as a gracious passenger in the goods vehicle. The policy is an act only policy. The second respondent is not liable to pay any compensation.

5.On the side of the claimant, one witness was examined and seven documents were marked. On the side of the second respondent therein, one witness was examined and one document was marked. After trial, the Tribunal has awarded a sum of Rs.9,48,000/- (Rupees Nine Lakhs and Forty Eight Thousand only) as compensation. Against which, the appellant herein has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellants, it is stated that the Tribunal failed to consider that the deceased was an employee of KC milk company, even Ex.P5 was filed to prove the profession. The deceased travelled as a loadman for loading and unloading the milk cans. It is wrong to state that the deceased travelled as an unauthorized passenger. The premium for the employee was paid and the second respondent is liable to pay compensation. A sum of Rs.25/- was paid as a premium for the employees and Rs.100/- was paid for owner and driver and that the policy itself is a package policy, and that the second respondent is liable to pay compensation and prayed the compensation is to be enhanced.

7.On the side of the appellants, it is stated that even in the FIR, it is clearly stated that the deceased was working as a salesman and he travelled for loading and unloading the milk cans. It is stated that in the inquest report, it was stated that the deceased was working as a helper in the KC milk company. The complainant also has given a statement under Section 161(3) of Cr.P.C., stating that the deceased was a helper in the KC milk company and that the van is having a seating capacity of (2+1) in the cabin. Ex.R1, policy is a package policy and that the insurance



company is liable to pay the compensation. In support of his contention, a judgment passed by this Court in the case of **National Insurance Co. Ltd., v. Backiam and others** in **C.M.A.No.31 of 2008** is cited.

8.The learned counsel for the appellants would rely upon the judgment passed by this Court in the case of **National Insurance Co. Ltd., v. Manimegalai and others** in **C.M.A.Nos.2405 and 3065 of 2018**.

9.On the side of the appellants, it is stated that a loadmen travelling in empty goods vehicle after the goods were delivered is also an employee. In support of his contention, a judgment of this Court in the case of **P.Prakash v. Thandivelu and others** reported in **2017 (2) TNMAC 34** is cited, wherein it is stated as follows:

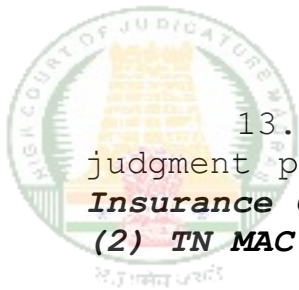
"A loadman or a Coolie who travelled in an empty goods vehicle either before taking delivery of the goods or after delivering the goods were considered as one falling under the definition of third parties within the meaning of Section 147 of the M.V. Act. The foundational justification for this is the benevolent objective behind the M.V. Act."

10.On the side of the second respondent, it is stated that the deceased was not travelling as an employee. He was an unauthorized passenger in the goods vehicle. As per Section 2(14) of the M.V. Act, the goods carriage has to be used only for the sole purpose of carrying goods not for carrying passengers. In support of his contention, a judgment passed by this Court in the case of **Kalavathy v. Annammal and others** reported in **2004 ACJ 1573** is cited.

11.The learned counsel for the second respondent would rely upon the judgments passed by the Hon'ble Apex Court in the cases of **National Insurance Co. Ltd., v. Bommithi Subbhayamma and others** reported in **2005(1) CTC 706** and **National Insurance Co. Ltd., v. Bharathamma and others** reported in **2004 ACJ 2094** are cited.

12.The learned counsel for the second respondent would rely upon a judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd., v. Devireddy Konda Reddy and others** reported in **2004 (2) TN MAC 383**, wherein it is stated as follows:

"Goods carriage" - Passengers travelling in goods carriage - provisions of Act do not enjoin any statutory liability on owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage - insurer, therefore, would have no liability - decision in *Asha rani* (2004 (8) Supreme 594) relied upon - high Court not justified in holding insurer liable to satisfy award"



13.The learned counsel for the respondents would rely upon a judgment passed by this Court in the case of **Bharathi AXA General Insurance Co. Ltd., and Others v. Aandi and others** reported in **2018 (2) TN MAC 731**, wherein it is stated as follows:

"In the instant case, deceased and injured claimants travelled in goods vehicle as a marriage party - Tribunal not right in directing insurer to pay and recover - mere difficulty in realizing award amount from owner of vehicle, cannot impel Court to do something against provisions of Statutes and Apex Court dictum - award as against insurer set aside"

14.On the side of the appellants, it is stated that two vehicles were involved in the accident but the owner of the other vehicle and the insurer of the other vehicle were not impleaded as parties. There was contributory negligence on the part of the other vehicle and that the petition is bad for non joinder of necessary parties.

15.In support of this contention, a judgment passed by the Hon'ble Supreme Court in the case of **Nishan Singh and others v. Oriental Insurance Co. Ltd., and others** reported in **2018(1) TNMAC 745** is cited.

16.The learned counsel for the second respondent would rely upon the judgments of this Court in the cases of **Divisional Manager v. Premavathi and others** and **United India Insurance Co. Ltd., v. A.Semmalar and others** reported in **2018 (2) TNMAC 705** and in **2019(1) TNMAC 22**.

17.FIR was registered against the van driver. FIR was marked and validity of the FIR was not denied by the respondents. There was no rebuttal evidence on the side of the respondents. As per the FIR, the van dashed against the tanker lorry, which was parked on the left edge of the road from the backside. In the above circumstances, it is decided that the accident took place only due to the rash and negligent driving of the van driver.

18.On the side of the second respondent, it is stated that the deceased was a gracious passenger in a goods vehicle. The van was having seating capacity in the cabin for one driver and two passengers. On the side of the second respondent, it is stated that the deceased was not an employee in the company and he travelled only as an unauthorized passenger. In the FIR, it is clearly stated that the deceased was working as a helper in KC milk company. The van was used for loading milk cans. The van was engaged by KC milk company for supplying milk cans.

19.The complaint was lodged by a co-worker. The complaint was
<https://hcservices.hcservices.in/hcservices/> the claimant or the relatives of the claimants. There



is no rebuttal evidence on the side of the respondents.

20.It is seen that the employment card was marked as Ex.P4. It is decided that the deceased was not an unauthorized passenger. An additional premium was also paid to the employee. Hence, it is decided that the **(*)2nd** respondent is liable to pay compensation.

21.On the side of the appellant, it is stated that the deceased was earning Rs.6,000/- (Rupees Six Thousand only) per month and prayed the award amount to be enhanced. The deceased was aged about 24 years at the time of accident. The multiplier '18' was applied by the Tribunal. The fixation of compensation by the Tribunal is reasonable. Hence, in the above circumstances, the order passed by the Tribunal is modified to the effect that the second respondent Insurance company is also liable to pay compensation to the claimants.

22.The award amount fixed by the Tribunal is reasonable and the appellants are entitled to a sum of Rs.9,48,000/- (Rupees Nine Lakhs and Forty Eight Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

23.In the result, this Civil Miscellenaous Appeal is **(*) modified**. The **(*)2nd** respondent **(*) on behalf of the 1st respondent is** are directed to deposit Rs.9,48,000/- (Rupees Nine Lakhs and Forty Eight Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the respondents. The claimants are not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-I)

(*) Amended as per the order of this court dated 11/02/2022 made in CMA(MD) .No. 503 of 2018

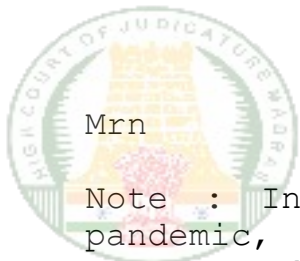
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Mrn

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 be substituted the order already despatched on 27/08/2021

To

1.The Motor Accidents Claims Tribunal, Special Sub Judge,
Dindigul.

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

+1 CC to M/s.A.SARAVANAN, Advocate (SR-25047[F] dated 03/08/2021)

C.M.A. (MD) No.503 of 2018
03.08.2021

PS (CO)

KB (02.03.2022) 6P 5C