

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2022

PRONOUNCED ON : 14.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.NO.3073 OF 2010

1. Pappathi
 2. Palaniappan
 3. Minor Kandasamy
 4. Minor Jothimani
- ... Appellants/Petitioners

(Petitioners 3 & 4 are Rep. By
Next Friend and Mother 1st Petitioner
Tmt.Papathi)

.Vs.

1. P.Vijayalakshmi
W/o.K.Palaniappan,
Sri Krishna Borewell Services,
54-C, Velur Road, Tiruchengode,
Namakkal District.
 2. United India Insurance Co.Ltd.,
No.146, West Car Street,
Tiruchengode,
Namakkal District
- ... Respondents/Respondents

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the order made in M.C.O.P.No.336 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Tiruchengode dated 27.10.2009 for fixation of liability alone.

For Appellants : Mr.C.Kulanthaivel

For Respondents : Mr.M.Vijayaraaghavan
For R2

R1 - Unserved

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the award dated 27.10.2009 made in M.C.O.P.No.336 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Tiruchengode exonerating the 2nd respondent-Insurance Company from its liability.

2. The appellants/claimants filed M.C.O.P.No.336 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Tiruchengode, claiming a sum of Rs.5,00,000/- as compensation for the death of one Madheshwaran, son of the appellants No.1 and 2 and brother of the appellants No.3 and 4, who died in the accident that took place on 30.01.2004.

3. The case of the claimants is that on 30.01.2004 at about 11.00 p.m., when the deceased Madheshwaran was working as a cleaner in a lorry bearing Reg.No.KA.04/D.9799, the driver of the lorry drove the vehicle at Vengaikurichi to Veerappaur Road near Vellapoolampatti and Aranampatti in a rash and negligent manner and capsized the vehicle. Due to the said impact, the said Madheshwaran sustained injuries on his head and all over the body and died on the spot. The said accident occurred only due to the rash and negligent driving of the driver of the lorry. Hence, the claim petition filed by the legal heirs of the deceased.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the first respondent/owner of the lorry has not paid any extra premium (i.e., Rs.25/- as additional premium for each and every additional employed persons engaged in the vehicle as driver/coolie/cleaner) covering the employees under the common law and therefore, granted a sum of Rs.5,00,000/- as total compensation and directed the first respondent/owner of the lorry to pay the compensation to the claimants.

5. Challenging the award dated 27.10.2009 made in M.C.O.P.No.336 of 2008 exonerating the 2nd respondent/Insurance Company from its liability, the appellants/claimants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the Tribunal erred in coming to the conclusion that the 2nd respondent is not liable to pay the compensation to the claimants, because the policy has not covered for the deceased and no extra premium has been paid to cover the risk of the person who travelled in the vehicle along with the driver, but, it was brought to the notice of the Tribunal that the

vehicle which was involved in the accident has covered the risk of the person who employed as cleaner in the vehicle. Therefore, the claims Tribunal ought to have fixed the liability on the 2nd respondent also. Hence, he prays to fix the liability on the Insurance Company to pay the compensation to the claimants.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Policy do not cover the persons travelled in the lorry since the 1st respondent had not paid any extra premium for covering the employees under the common law. The first respondent had violated the Policy conditions and hence, the Insurance company is not liable to pay any compensation to the claimants. The Tribunal have given valid reason for giving such a finding. In any event, the amount awarded by the Tribunal fixing the liability on the first respondent is just and reasonable and prayed for dismissal of the appeal. Further, in support of his contention, he relied upon the following Judgment in the case of National Insurance Co. Ltd., Vs. M.Padmini and others, reported in 2017 (1) TN MAC 566, wherein, it is relevant to extract the following Paragraphs, which reads as follows:

"5.It is not an easy route that the Tribunal has adopted to conclude that the Appellant was not liable. It helped itself to be guided by several Authorities commencing from New India Assurance Vs. Asha Rani and Others,2004 (2) TN MAC (SC) 387 : 2003 (2) SCC 223, to United India Insurance Company Limited Vs. Tilak Singh and others, 2006 (1) TN MAC 36 (SC) : 2006 (2) CTC 661, to arrive at its conclusion. I find the said finding is in order and does not call for any interference.'

6.In this context, I find that the submissions of the learned Counsel for the Respondents/ Claimants suspecting the genuineness of Ext.R1 less convincing. It does not stand to reason as to why should an Insurance Company go personal in this particular case to fabricate a document when it faces claims running to several lakhs every day. And Ext.R6 - Proposal Form does not support him either. As to the second leg of his argument in equating Loading TP with additional premium, it needs to be stated that the expression TP is but an abbreviation for Third Party and the premium on a Third Party Insurance is additionally loaded. In this regard General Regulations in GR3 of IMT is relevant.

"G.R.3 Policy Forms:

Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the Indian Motor Tariff.

A.Types of Policies:

There are two types of Policies:

(i)Liability Only Policy:This covers Third party Liability for bodily injury and/or death and Property damage. Personal Accident Cover for Owner-Driver is also included.

(ii)Package Policy:This covers loss or damage to the Vehicle insured in addition to (i) above.

Restricting the scope of cover under Section-I (loss of or damage to the Vehicle insured) of the Package Policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the covers, Terms, Conditions, Exclusions, etc. of any of the Policies/Endorsements laid down in this Tariff is permitted without prior approval of the TAC.

8.The circumstances in which the Doctrine of Pay and Recover might be applied is considered by a Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd. v. Nagammal, 2009 (1) CTC 1, where the Court inter alia held that in all cases that were decided after the decision of National Insurance Co. Ltd. v. Baljit Kaur and others, 2004(1) CTC 210 (SC) : 2004 SCJ 428, Tribunal cannot apply the Doctrine of "Pay and Recover" where there is no Insurance cover. So far as the present case is concerned, the Award was passed by the Tribunal on 20.2.2007, some three years after the Judgment in Baljit Kaur case (delivered on 6.1.2004). However, the Judgment of the Full Bench in Nagammal case was pronounced only on 23.12.2008, and hence, the Tribunal could not be blamed for applying the Doctrine of "Pay and Recover". But. As on today Nagammal's case holds the territory and hence this Court holds that the Doctrine of 'Pay and Recover' cannot be applied in this case."

8. Before the Tribunal, P.W.1 to P.W.4 were examined on the side of the appellants and fifteen (15) documents were marked as Exs.P1 to P15. The Branch Manager of the second respondent was examined as R.W.1 and Ex.R1- copy of the Insurance Policy was marked. X-Ray of one Rangasamy and Perumal were marked as M.O.1 and M.O.2 on the side of the respondents.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused all the materials available on record.

10. A perusal of the Judgment in the case of National Insurance Co. Ltd., Vs. M.Padmini and others (supra) and the judgment of the Tribunal would go to show that the Tribunal after considering the Policy conditions has held that the first respondent has not paid any extra premium for each and every additional employed persons engaged in the vehicle as driver or coolie or cleaner covering the employees under the common law, hence, the second respondent/Insurance Company is not bound to pay any compensation to the claimants. Therefore, the Tribunal has directed the first respondent/owner of the lorry to pay a sum of Rs.5,00,000/- as total compensation to the claimants and there is no error in the said finding warranting interference by this Court.

11. In the result, the appeal is dismissed. The 1st respondent is directed to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.336 of 2008. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The Award of the Tribunal remains unaltered in other respects. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msv

To

The Sub-Judge,
Motor Accident Claims Tribunal Cum Sub Court,
Tiruchengode.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.35134

C.M.A.NO.3073 OF 2010

PMK(CO)
PBS/13/07/2022