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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

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THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2080 of 2006
(Through Video Conferencing)

The Branch Manager,
National Insurance Company Ltd.,
Branch Office,
No.305, E Bangalore Road,
Krishnagiri Town & Taluk,
Dharmapuri District.

... Appellant/2nd Respondent
in Tribunal below

vs.

1. Natesan
2.Mathammal
3.Madhu
4.Vajjiram
5.Sarasu,
6.Sangeetha
7.Minor.kamal alias Murugan
(represented by his father
and next friend Natesan)
8.Selliammal
9.G.Syed Yakab

... Respondents 1 to 8 and
1st Respondent in Tribunal below
(9th Respondent was set exparte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and decree in M.A.C.T.O.P.No.1511 of 2003 dated 06.12.2005, on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Krishnagiri.

For Appellant : Mr.S.Vadivel

For R1 to R8 : M/s.V.Kumaravelan

For R9 : No Appearance



J U D G M E N T

The Insurance Company is the appellant and is aggrieved by the impugned Judgment and Decree dated 06.12.2005, passed by the Motor Accident Claims Tribunal, (Principal District Court), Krishnagiri, in M.A.C.T.O.P.No.1511 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,29,800/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the 1st to 8th respondents/claimants.

3. The 1st and 2nd respondents/claimants are the father and mother and 3rd to 7th respondents are the brothers and unmarried sisters and 8th respondent is the grandmother of the deceased Elangovan, who died in a motor accident. The accident is said to have taken place on 27.05.2002 at about 05.30 p.m while the deceased was travelling on a Tractor-Trailor bearing registration number TN-29-Z-8107 belonging to the 8th respondent and insured with the appellant, driven by its driver. The said driver drove the tractor in a rash and negligent manner without observing any rules of the road, the deceased who was accompanying with the goods, in the trailer, fell down under the wheels of the trailer. As a result of which, the deceased Elangovan sustained grievous injuries and thereafter died in the hospital.

4. The 1st to 8th respondents as the dependents of the deceased Elangovan and they have filed the claim petition before the Tribunal for compensation of Rs.8,00,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation to the 1st to 8th respondents/claimants.

5. The liability fixed by the Tribunal vide impugned Judgment and Decree is sought to be assailed primarily on the ground that under the scheme of Motor Vehicles Act, 1988 and the Insurance Law. It is submitted that both the Tractor and the Trailer are treated as a separate vehicle and required separate Insurance Policy. Though it is the case of the 1st to 8th respondents/claimants that the deceased travelled on the Trailer as the owner of the goods, the Trailer in question was not insured with the appellant Insurance Company and therefore, no fault liability can be fastened on the appellant Insurance Company.

6. That apart, it is submitted that the deceased who was travelling on the Trailer was not an authorised passenger to



travel on the Trailer under the Motor Vehicles Act, 1988. Therefore, no fault liability can be fastened on the Insurance Company even it is to be considered that the Insurance Policy for the Tractor was covered Insurance Policy for the Trailer. The learned counsel for the appellant further submits that the findings of the Tribunal that the Trailer was incapable of being driven separately and therefore being attached to the insured Tractor cannot make the appellant as responsible under the Contract Act as separate policy for the Trailer.

7. Aggrieved by the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant Insurance Company submits that the Tribunal ought not to have fastened the liability on the appellant after finding that the tractor trailer was not insured with the insurance company. He further submits that Tribunal failed to see that the policy was issued only to the tractor and not to the trailer and in the circumstances the Tribunal ought not to have fixed the liability on the appellant.

9. Per contra, the learned counsel for the respondents 1 to 8/claimants submitted that the impugned Judgment and Decree was well reasoned and requires no interference.

10. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the learned counsel for the respondents 1 to 8. I have also perused the impugned Judgment and Decree passed by the Tribunal and the evidence on record.

11. The Tribunal after considering the decision of this Court reported in Gunti Devaiah and Others vs. Vaka Peddy Reddy and Others, 2004 ACJ 1881, it was reads as under:-

"14.while all the motor vehicles may fall within the definition of vehicles, but all the vehicles are not motor vehicles. The trailer as such is an attachment made to the prime mover either a tractor or a mechanically contrivance and it has no independent propulsion. The trailer always is a detachable container, which does not have any independent driving system. Its movements are dependent on the prime mover, such as tractor, motor vehicle, etc."

"26. The issue can also be judged from another angle. Suppose, if an accident takes place on



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account of the rash and negligent driving of the tractor and the accident is caused by the tractor itself, in such an event, the insurer of the tractor and its owner would be liable. If the victim is hit by the trailer on account of the rash and negligent driving of the driver of the tractor, can it be said that the owner of the trailer will be liable for the compensation. But for the negligence driving of the prime mover or the tractor or motor vehicle, the accident could not have occurred. Therefore, whether the trailer is insured or not, the liability of the owner of the motor vehicle prime-mover of the tractor will be alone responsible for causing the accident and liable for compensation. If the trailer is insured, it cannot be construed as Insurance of a motor vehicle making the owner of the trailer liable for compensation under the principle of tortious liability. The Insurance cover was made to claim damages to the vehicle and other connected unforeseen incidents, but if simply the trailer is not insured, it cannot be said that the owner of the tractor and its insurer are not liable on the ground that the trailer was not insured."

12. The order passed by the Tribunal is a well considered order relying on the above Judgment, which does not warrant interference from this Court and therefore the Civil Miscellaneous Petition is dismissed. The appellant Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal together with interest and costs as directed by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, respondent Nos.1 to 6 and 8th /claimants are entitled to withdraw the compensation together with interest and cost in the same proportion as was directed by the Tribunal, by filing suitable applications before the Tribunal.

14. Since the 7th respondent was aged about 14 years at the time of filing of claim petition in the year 2002 and he would have attained age of majority, the 7th respondent is directed to file suitable application for recording the age of majority before the Tribunal to withdraw his share together with interest.



No cost. Consequently, connected Miscellaneous Petition is closed.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kkd

To

The Motor Accidents Claims Tribunal,
(Principal District Court), Krishnagiri.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.S.Vadivel, Advocate Sr.11829
+1cc to M/s.U.Karunakaran, Advocaes Sr.12280

C.M.A.No.2080 of 2006

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srg 29/03/2022