



C.M.A.No.3501 of 2017
C.M.P.Nos.21521 of 2019
22254 of 2017 and 9965 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3501 of 2017
and C.M.P.Nos.21521 of 2019, 22254 of 2017 and 9965 of 2019

Shriram General Insurance Co.Ltd.,
Represented by its Manager,
10003 E8, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan State – 302 022

.. Appellant

-Vs.-

1. Rathima Beebi
2. Jabaerullah
3. Amanullah
4. C.Ramamoorthy

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 30.09.2015 made in M.C.O.P.No.329 of 2012, on the file of the Motor Accident Claims Tribunal (IV Additional District Court) Bhavani.

For appellant ... Mr.S.Dhakshnamoorthy

For Respondents

1 to 3 ... Mr.C. Kulanthaivel

For Respondent-4 Mr.S.Murugan – No Appearance



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JUDGMENT

The Insurance Company has challenged the Award passed by the learned IV Additional District Judge (MACT), Bhavani in M.C.O.P.No.329 of 2012 stating that the accident was not a motor accident and the award of compensation therefore was totally erroneous and liable to be set aside.

2. The parties are referred to in the same ranking as before the Tribunal.

3. The brief facts are as follows:-

The legal representatives of one Salim @ Rehamatullah had filed the above M.C.O.P claiming compensation of a sum of Rs.15,00,000/- for the death of Salim @ Rehamatullah, the husband of the first petitioner and father of the second and third petitioners. It is their case that Salim @ Rehamatullah was a load man earning a monthly income of Rs.10,000/- and aged about 47 years. On 14.09.2012 at about 07.45 p.m when the deceased Salim @ Rehamatullah was unloading the granite stones from the Eicher



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lorry bearing Registration No.TN-34-F-9432 at Kavundapadi, the granite stones had fallen on him, as a result of which, he had sustained grievous injuries and succumbed to his death on the spot. They would contend that the accident had occurred in the course of his employment and the lorry driver was the responsible for the accident.

4. The second respondent-Insurance Company had filed their counter and an additional counter, in which, they have stated that the deceased Salim @ Rehamatullah never worked as a load man in the Eicher lorry, bearing Registration No.TN-34-F-9432 and was also not unloading granite stones at that time. Further even assuming that he was doing the unloading, the policy which has been issued to the first respondent did not cover the risk of coolie, since no additional premium has been paid to cover the risk of coolie. The Police, who had registered the F.I.R after investigation, had submitted a final report, in which, they had stated that the accident had occurred when the deceased was supervising the unloading of the granite stones which had come from Krishnagiri District. When the load



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men were unloading the granite stones, the deceased Salim @ Rehamatullah had got on to the vehicle and was holding on to the granite stones and at that point in time the same had fallen on top of him. Therefore, the Police had closed the case on the ground that it required no further investigation.

5. The Tribunal below however relied upon the contention of the petitioners that the deceased Salim @ Rehamatullah had travelled in the first respondent's lorry as a load man and had died in the course of his employment. Therefore, since the accident had occurred when he was in the employment of the first respondent's lorry as a load man, the first respondent is bound to compensate the petitioners and ultimately had arrived at a sum of Rs.8,96,000/- as compensation.

6. Mr.S.Dhakshinamoorthy, learned counsel appearing for the appellant-Insurance Company would rely upon the statement made by the deceased Salim @ Rehamatullah's son in the F.I.R, wherein, he has in clear and categoric terms that his father was a supervisor, supervising the



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construction work in the house of one Mani. He has stated that his father was also engaged in real estate work. Therefore, the accident has not occurred out of use of the vehicle.

7. Mr.C.Kulanthaivel, learned counsel appearing for the respondents 1 to 3 would submit that the F.I.R cannot be relied upon, since the criminal records are not to be relied upon in the motor accident claims, which is only a summary procedure. He would also rely upon the evidence of P.W1 and 2 to state that the deceased was a load man. He would also submit that the policy that has been taken by the fourth respondent covered a load man.

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

9. The F.I.R has been lodged by the son of the deceased Salim @ Rehamatullah. In the F.I.R, he would state that his father was working as a



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real estate broker and he was supervising the construction of the house of one Mani in Om Sakthi Nagar at Kavundapadi. He would further state that on 14.09.2019, the granite stones had come from Krishnagiri and the lorry was parked in front of the house of Mani. The load men, Ashokkumar, Govindaraj, Murali, Pasupathi, Krishnan and the driver, Gandhi were unloading the granite stones and was stacking it up in two columns. At that time, his father had boarded the van to check the unloading activity. At that time, 5 granite stones stacked on the left side suddenly fell over his father, as a result of which, injuries and death has taken place.

10. P.W2-Meeramoideen, who claims to be the President of the Load Man Welfare Association, would contend that the deceased Salim @ Rehamatullah was a Member of the Association(however, no documents has been filed to prove the same). He would claim that he was also unloading the granites at Mani's house on the said day. However, his name does not feature in the complaint given by the deceased son. In his cross examination, he would admit that he has not given the complaint and he



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would also state that he was unaware as to what work the deceased was doing to earn his living. This would clearly show that the witness is a planted witness. This coupled with the statement given by the son would clearly show that the accident had not occurred on account of the negligence on the part of the driver of the vehicle or that the accident had occurred while the vehicle was in use. In fact, the Tribunal has fastened the liability stating that the deceased was an employee in the fourth respondent's lorry, which is not the case pleaded or proved by the the respondents 1 to 3 herein.

11. For the above reasons, the order passed by the Tribunal below is one without merit and has to be set aside and is accordingly set aside. Accordingly, the Civil Miscellaneous Appeal is allowed. The award amount deposited by the appellant-Insurance Company, if any, shall be refunded. No costs. Consequently, connected miscellaneous petitions are closed.

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P.T.ASHA.J

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To

1. The Motor Accident Claims Tribunal
(IV Additional District Court) Bhavani.
2. The Section Officer,
V.R.Section, High Court, Madras

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