



C.M.A(MD) No.557 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **16.09.2022**

Pronounced on : **16 .12.2022**

CORAM: **JUSTICE N.SESHASAYEE**

C.M.A(MD) No.557 of 2019

CMP.(MD) No.6696 of 2019

and CMP.(MD) No.2924 of 2020

M/s.The Oriental Insurance Co., Ltd.,
Through its Divisional Manager,
D.No.1024-B, Sri Vijay Complex,
Cumbum Road, Opp to Bus Stand,
Theni Town & District

... Appellant/3rd Respondent

vs.

1.Thangam
2.Anbalagan
3.Murugan
4.Muthulakshmi
5.Karuppayee
6.Saravanan
7.Murugan

... Respondents 1 to 5/Petitioners 1 to 5

... Respondents 6 & 7/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the fair and decretal order dated 05.10.2018 made in M.C.O.P.No.74 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Tenkasi.

For Appellant : Mr.C.Karthik

For R1 to R5 : Mr.D.Venkatesh



C.M.A(MD) No.557 of 2019

fastened the liability jointly and severally on the owner of the tractor and also the insurance company of the tractor. Aggrieved by the same, the insurance company of the tractor is now before this Court with this appeal.

3. The point of objection raised by the learned counsel for the appellant is the one it had raised before the tribunal: that the trailer attached to the tractor was neither registered nor insured, that in terms of the definition provided in the Motor Vehicles Act, the tractor and the trailer are two different motor vehicles, but the tribunal omitted to consider it. Arguing further, the learned counsel submitted that by attaching an unregistered and uninsured trailer to his tractor, the owner of the tractor has violated a policy condition, and hence the insurance company cannot be fastened with any liability. Reliance was placed on the dictum in *The Oriental Insurance Co. Ltd. Vs. Sri D.Laxman* [2007(4) Kar1J 224] and that of this Court in *The Divisional Manager, United India Insurance Co. Ltd., Thiruvannamalai District Vs. Subramani and 2 others* in C.M.A.No.1815 of 2015 dated 28.09.2020.

4. Per contra, the learned counsel for the respondents 1 to 5/claimants would argue that the trailer is not an independent vehicle, and when once it is



C.M.A(MD) No.557 of 2019

attached to tractor, it has to be treated as a single vehicle, and the owner of the tractor would therefore become liable. When once the owner is liable to pay compensation, while reckoning the entire tractor and trailer as a single unit, then, the insurance company also is liable along with the owner of the vehicle. Reliance was placed on the judgment of the Hon'ble Division Bench of this Court in *the New India Assurance Co., Ltd., Trichy Vs. M.Karunanidhi rep. By K.Thangaponnu and 6 others* in C.M.A(MD)No. 657 of 2018 dated 09.07.2013.

5.1 The issue involved is uncomplicated: Is the insurance company liable to pay compensation when an unregistered and uninsured trailer attached to an insured motor vehicle is involved in an accident? This issue was considered at great length by a Division Bench of the Karnataka High Court in *The Oriental Insurance Co. Ltd. Vs. Sri D.Laxman* [2007(4) Kar LJ 224]. That was a case where the workmen of the owner of a tractor while travelling in a registered but an uninsured trailer was either killed or suffered injuries in an accident. Claims for compensation were made under the Workman Compensation Act before which the insurance company of the tractor pleaded for absolving itself of a potential liability on the ground that the trailer was uninsured. The Tribunal rejected the plea and fastened the



C.M.A(MD) No.557 of 2019

liability also on the insurance company since the trailer is attached to the tractor. When the matter reached the Karnataka High Court in appeal, it held that a trailer though is a motor vehicle within the inclusive definition of a motor vehicle under Sec.2(28) of the M.V.Act, yet it has to be registered and has to separately insured and inasmuch as the trailer was not insured it absolved the insurance company of the tractor of the liability fastened on it by the tribunal.

5.2 In *The Divisional Manager, United India Insurance Co. Ltd., Thiruvannamalai District Vs. Subramani and 2 others* [CMA.No.1815 of 2015] the facts are that a tractor hit a two wheeler and the trailer ran over the victim. And, the trailer was not insured as in the present case. A learned Single Judge of this Court has held that both tractor and the trailer must be separately insured, and since the trailer was not insured it reduced the liability of the insurance company of the tractor by 50%, yet applied the pay and recover doctrine and directed it to pay the entire compensation and to recover the balance from the owner of the vehicle.

6. On facts, this case varies from the aforesaid case in CMA 1815 of 2015. Here, no part of the tractor was involved in the accident and only the trailer



C.M.A(MD) No.557 of 2019

has knocked off a two wheeler and killed him. Since a trailer is a motor vehicle within the meaning of Sec.2(28) of the M.V.Act, it necessarily has to be insured and hence the insurance company of the tractor can justly deny and defy its liability. Here, it needs to be underscored that even though a trailer falls within the definition of a motor vehicle, yet it is not a self-propelling vehicle, and it requires another motor vehicle with propulsion to pull it. The duty therefore, is on the driver of the tractor to ensure that no part, either the tractor or the trailer attached to it, that their use in the public place does not lead to the death or bodily injury to third parties. In other words, it is the negligence of the driver of the tractor that led to the accident involving the trailer. This court therefore, fixes the liability of the insurance company at 50% and that of the owner of the tractor at 50%.

7. To conclude, the liability of the insurance company/appellant to pay the compensation as determined by the MACT is reduced by 50% and it will be jointly and severally liable to pay 50% of the compensation amount now determined by the Tribunal to the claimants. So far as the remaining 50% of the compensation amount is concerned, the owner of the tractor alone is liable, but the Insurance Company is directed to pay the same and recover it from the owner of the tractor.



C.M.A(MD) No.557 of 2019

WEB COPY

8. In the result, this Civil Miscellaneous Appeal is partially allowed and the award passed in M.C.O.P.No.74 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Judge/Fast Track Court, Tenkasi is modified to the extent indicated above.

9. This Court is informed that the appellant-Insurance Company has deposited the entire award amount before the Tribunal to the credit of MCOP.No.74 of 2017, in terms of the order dated 27.08.2019 passed in CMP.(MD) No.6696 of 2019, and that upon deposit of said amount before the Tribunal, the Court had directed the Tribunal to transfer it to the credit of C.M.A.(MD) No.557 of 2019 before the Indian Bank, Madurai Bench of Madras High Court Branch, Madurai, and accordingly, the award amount now lies in the Indian Bank, Madurai Bench of Madras High Court Branch, in the said account.

10. The Registry is now directed to take steps to transfer the same to the MACT / Additional District cum Fast Track Court, Tenkasi within a period of four (4) weeks from the date of receipt of a copy of this order. The claimants are now permitted to withdraw the award amount which they are



C.M.A(MD) No.557 of 2019

entitled to, in the same ratio as has been apportioned by the Tribunal. The claimants are directed to pay necessary court fee, if any. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

.12.2022

Index : Yes / No
Speaking order / Non-speaking order
CM/ds

To:

1. The Motor Accident Claims Tribunal,
Additional District Court (Fast Track Court),
Tenkasi.
2. The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD) No.557 of 2019

N.SESHASAYEE., J.

CM

Pre-delivery Judgment in
C.M.A(MD) No.557 of 2019

16s.12.2022