BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.11.2022

Delivered On : 21.12.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.659 of 2020

The Branch Manager,
The Oriental Insurance Company Limited.,
Sathiyamoorthy Road,
Near Teem Hospital,
Pudukkottai. .. Appellant /2nd Respondent

Vs.

1.Chellammal ... 1st Respondent / Petitioner

2.Kanagaraj ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment, dated 30.09.2020, made in M.C.O.P.No.552 of 2017, on the file of the Motor Accident Claims Tribunal cum Presiding Officer - Principal District Judge, Pudukkottai.

For Appellant	: Mr.K.Balasubramanian
For Respondents	: Mr.D.Ramesh Kumar for R1
	: No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 30.09.2020, made in M.C.O.P.No.552 of 2017, on the file of the Motor Accident Claims Tribunal cum Presiding Officer - Principal District Judge, Pudukkottai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.552 of 2017, is as follows:

On 28.07.2017, while the deceased – Manikandan and others were proceeding in a garbage tractor bearing Registration No.TN-55-V-8718, the driver of the Tractor drove the vehicle in a rash and negligent manner. As a result, the deceased fell down from the tractor and the right side rear wheel run over him. The deceased was aged about 21 years, he was doing sweeper work and was earning Rs.20,000/- per month. The petitioner is his dependant and she claimed a sum of Rs.30,00,000/- as compensation.

3. A Brief substance of the counter filed by the first respondent, in M.C.O.P.No.552 of 2017, is as follows:

The first respondent driver drove the vehicle /tractor in a slow and cautious manner. The respondent is not liable to pay compensation.

4. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.552 of 2017, is as follows:

The first respondent permitted one Panneer @ Panneerselvam to drive the tractor, without driving licence. The first respondent violated the policy conditions. The tractor has a sitting capacity for only one person, that is, the driver, but, 4 persons were travelled in the tractor on the mudguard. No premium was paid for any person, other than the driver. The tipper attached with the tractor was not mentioned in the F.I.R, but, the same was mentioned in the M.V.I. Report and an unregistered tipper was used in the tractor. The first respondent violated the policy conditions. The respondent is not liable to pay compensation. The age, income, occupation of the deceased are to be proved.

5. 2 witnesses were examined and 7 documents were marked, on the side of the claimant. 2 witnesses were examined and 3 documents were marked, on the

side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.14,20,800/- as compensation to be paid by the second respondent.

6. Against the order, the second respondent / appellant has filed this appeal, on the following grounds:-

The Tribunal failed to consider that the deceased-Manikandan and one Muthupandi were sitting on the right side of the driver seat. Sengottaiyan and another Manikandan were sitting on the left side of the driver seat. As a result, the deceased-Manikandan stumbled and fell down. A passenger travelling in a tractor, which is not used for an agricultural purpose, is not entitled for claiming compensation. Only the owner of the vehicle is responsible to pay compensation. The Insurance Company ought to have been exonerated from the liability. In the tractor, the seating capacity is one. The insurer has paid premium only for one person, that is, the driver. 4 persons sitting on the mudguard and one of them fell down and died. The award is excessive.

7. On the side of the appellant, it is stated that totally 5 persons travelled in the tractor. The tractor was not used for agricultural purpose. Nobody is entitled to travel by sitting on the mudguard. Only the owner is liable to pay compensation. A judgment of this Court reported in 2022-1-TNMAC-648 (United India Insurance

Co.Ltd., V. Saraswathi) is cited, wherein, it is stated as follows:-

> *"Tractor having seating capacity only for 1 person that too for driver. No provision for any other person including employer to travel in tractor. The deceased, who travelled in tractor, can only be said to be a gratuitous passenger in respect of whom no premium paid. The Insurer, therefore, not liable in respect of such passenger. In view of law laid down by Apex Court, the Insurer cannot be directed to pay and recover. The impugned order holding insurer liable to pay compensation, set aside. The claimants are entitled only to proceed against the owner to recover the compensation as awarded by the Tribunal "*

8. On the side of the first respondent - claimant, it is stated that the accident has happened only due to the rash and negligent driving of the tractor driver. The deceased was only 21 years and prayed the award to be enhanced.

9. On the side of the first respondent - claimant, it is stated that the accident has happened only due to the negligent act of the tractor driver. The appellant is liable to indemnify the owner, who is a third party and prayed that the appellant is liable to pay compensation and then the appellant may be permitted to recover the same from the owner of the vehicle.

10. It is seen that P.W.2 was examined as an eye witness. Ex.P1 was the copy of the first information report. Ex.P6 was the copy of the M.V.I. report. Copy of the registration details of the owner of the vehicle was marked as Ex.R1. From the evidence of P.W.2 and from Ex.P1, Ex.P4 , Ex.P6 and Ex.R1, it is decided that the accident has taken place due to the rash and negligence of the tractor's driver.

11. The driving licence of the owner of the vehicle was marked as Ex.R2. Copy of the insurance policy was marked as Ex.R3. There is no serious dispute regarding the quantum fixed by the Tribunal. The Tribunal has fixed monthly income as Rs.9,000/-. After including 40% (Rs.3,600/-) towards future prospects, the income is calculated as Rs.12,600/-. After deducting 50% towards own expenses of the deceased, the loss of monthly income is Rs.6,300/-. The age of the deceased was mentioned as 21 years in the petition. Hence, multiplier '18' is applicable. The Tribunal fixed the loss of income as Rs.13,60,800/- (Rs.6,300/- X 12 X 18 = Rs.13,60,800/-) which is reasonable. The Tribunal awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transport expenses and awarded total compensation of Rs.14,20,800/-, which are all reasonable.

12. A perusal of the Insurance Policy reveals that under the head of "Basic TP cover" Rs.3,822/- was collected; under the head of "P.A for owner driver Rs.100/- was collected and under the head of "LL paid driver", conductor and cleaner" Rs.50/- was collected. The necessity to collect premium for conductor and cleaner in a Tractor was not mentioned by the appellant.

13. Since the policy is a comprehensive policy, it is decided that the Insurance Company has to pay the compensation amount with interest and costs to the claimant at the first instance and the Insurance Company is permitted to recover the same from the owner of the vehicle.

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.14,20,800/-(if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Thereafter, the Insurance Company is permitted to recover the same from the owner of the vehicle.**

(ii) On such deposit being made by the appellant / Insurance Company, the first respondent herein/claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her. The claimant is not entitled for interest for the default period, if there is any.

21.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Principal District Judge,
Motor Accident Claims Tribunal cum Presiding Officer,
Pudukkottai.

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

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.659 of 2020

21.12.2022