



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA (MD)No.972 of 2016

and

CMP.(MD)No.8707 of 2016

WEB COPY

The Divisional Manager,
Oriental Insurance Co.Ltd.
Branch Office,
Old No.119, New No.145, Sathiyamoorthy Illam ,
1st Floor, Sakkalai Road,
Karaikudi.

... Appellant/ 2nd Respondent

Vs

1. Kamalam

2. Muniyandi

...Respondents 1 & 2/Petitioners

3. Karuppaiah

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Award of Rs.5,40,000/- (Rupees Five Lakhs Forty Thousand Only) passed in M.C.O.P No.7 of 2012, dated 07.04.2016, on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Ramanathapuram.

For Appellant : Mr.A.Ilango

For R3 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the insurance company, challenging the award of the the Motor Accidents Claims Tribunal cum Principal District Judge, Ramanathapuram, made in M.C.O.P No.7 of 2012, dated 07.04.2016, on the point of negligence and liability.

2.The claim petitioners have travelled in a trailer attached to a tractor. The policy is a Kisan policy, in other words, an agricultural coverage policy. The claim petitioners are the wife and father of the deceased. The claim petition has been filed on the ground that the deceased was travelling as a load man in the vehicle, for loading and unloading the goods carried from Ramanathapuram to Nainarkovil main road Thoruvallur colony. In the accident, he sustained injury and died subsequently. The responsibility is fixed on the vehicle insured with the appellant herein and the same was accepted.



3.As per the stand of the insurance company before the Tribunal, it is submitted that the policy is meant for agricultural package policy and therefore, load man travelling in a tractor is not permitted. In view of the finding before the Tribunal that the accident has taken place due to the rash and negligence on the part of the driver of the vehicle insured with the appellant and the same is hereby confirmed.

4.Now, the point for consideration is whether the deceased has travelled as an agent of the vegetable goods carried in the insured vehicle or as a load man. Following the decision of the High Court of Madras reported in **[2011(2) 672 TNMAC]** in the case of **Branch Manager - New India Assurance Company, Dharmapuri Vs. Perumal and others**. Considering the fact that the deceased was travelling as a coolie for loading and unloading the vegetables carried in the tractor, the tractor has hold the policy, is binding, there is no violation of the policy condition and hence held that the insurance company is liable. The said finding is under challenge.

5.Taking note of the fact that P.W.2, Velu, who has travelled along with the deceased on the date of the occurrence, was stated that he along with the deceased have carried paddy bags from the house and paid the rent to the owner of the vehicle. After selling the paddy, on return, the accident has taken place. The tractor is used for agricultural purpose. It was taken on rent and therefore I find that the principles of "pay and recovery" shall apply. The decision of the Hon'ble Supreme Court of India reported in 2018 (2) TN MAC 273(SC) in the case of **Shivaraj Vs Rajendran and another** and accordingly, the insurance company is exonerated from its liability to pay compensation to the claimant. However, the award is stands modified to "pay and recover". Except the said modification, in all other aspects, the award of the Tribunal is kept intact.

6.This Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance company directed to pay the award amount to the claimants at the first instance and then to recover the same from the owner of the vehicle by following the due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



1.The Motor Accidents Claims Tribunal,
The Principal District Judge, Ramanathapuram.

2.The Record Clerk,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.ILANGO, Advocate (SR-9960[F] dated 04/03/2022)

CMA (MD)No.972 of 2016
and
CMP.(MD)No.8707 of 2016
03.03.2022

SVS(CO)
KB(23.03.2022) 3P 5C