



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2440 of 2009 and 491 of 2014
and M.P.1 of 2014

National Insurance Company Ltd.,
403, Mettur Road, Bhavani.

.. Appellant in both the appeal

Vs.

1. Govindhan

.. Respondent in CMA.No.2440 of 2009

1. Duraisamy

.. Respondent in CMA.No.491 of 2014

2. M/s.Shanmuga Bore wells,
2/117, Koonampatty Pudhur
Pallagoundampalayam Post,
Vijayamangalam Via,
Erode District.

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.02.2008 made in MCOP.Nos.548 and 549 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC-2, Salem.

For Appellant : Mr.S.Arun Kumar (In both the cases)
For Respondents : No appearance R1 & R2
for CMA No.2440/2019
for CMA No.491/2014 : Mr. N.Manikandan R1
R2 – No appearance – unclaimed

**COMMON JUDGMENT****WEB COPY**

This appellant/Insurance company has come forward with the present appeal, against the award and decree dated 15.02.2008 made in MCOP.Nos.548 and 549 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC-2, Salem.

2.Brief fact which are necessary for disposal of this appeal are as follows:

The first respondent in both the appeals had been worked with the second respondent and got a sum of Rs.8,000/- per month as salary and other allowances. On 29.01.2004, the first respondent and others had travelling the lorry bearing Registration No.TN 33 U 1663 for digging borewell in Erode. At About 1.30 PM. the above said lorry was driven by the driver Manickam in rash and negligent manner. All of a sudden the said lorry dashed against the lorry which came from the opposite direction in which the first respondent in both the appeals had sustained injuries and one Ganesan died on the spot. Due to which, the claimant was taken to Hospital. Thereafter, the claimants have filed separate claim petitions under Section 166 M.V.Act, claiming compensation of Rs.3,00,000/- and Rs.2,00,000/-



respectively before the Motor Accidents Claims Tribunal, Additional District Judge, FTC-2, Salem and the same was taken on file as MCOP. Nos. 548 and 549 of 2004.

3. Before the Tribunal, during trial, in order to prove the case, the claimants have examined three witnesses viz., PW1 to PW3 and marked Exs.P1 to P14, On the side of the Insurance Company, one witness was examined and one document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded a sum of Rs.81,660/- and 10,000/- as compensation to the claimants along with interest, aggrieved by the said award dated 15.02.2008, the appellant/insurance company has filed these appeals before this Court for violation of the policy condition.

4. The learned counsel for the appellant/insurance company submitted that the appeals have been filed not on the part of the negligence, for violation of the policy conditions. The Tribunal has passed the award contrary to the policy conditions. The Tribunal failed to note that the second respondent has violated the policy conditions by permitting to carry more



than 15 passengers in a goods vehicle. Further the Tribunal failed to note that for the purpose of claiming compensation from the appellant it has been alleged that the first respondent's vehicle was engaged as supporting lorry. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is excessive which warrants interference. In support of the contention, the learned counsel relied upon the decision of the Hon'ble Supreme court reported in 2013 (1)TNMAC 34 (SC).

5. Per contra, the learned counsel for the first respondent/claimants submitted that admittedly the the first respondent in both the cases were working as employee with the second respondent and they were earning Rs.8,000/- per month at the time of accident. The second respondent had allowed the respective respondents to travel in the lorry, which was insured with the appellant and when the employees travelled in the lorry and met with an accident, they were covered by the policy. On perusal of Ex.R1, the appellant has collected a sum of Rs.175/- as employees premium and for third parties, the appellant has collected a sum of Rs.3580/-. The second respondent employer paid a sum of Rs.6730/- as premium amount to the appellant. When the respective claimants were employed with the second



respondent and they travelled in the lorry owned by the second respondent, which was insured with the appellant Corporation, in which, they are entitled to claim compensation and the compensation awarded by the Tribunal is just, fair and reasonable and hence, the same does not require any interference in the hands of this Court.

6. Heard the learned counsel for the appellant/insurance company and the learned counsel for the first respondent and also perused the materials available on record.

7. The first respondent herein in both the appeals, who are the claimants, have worked with the second respondent. On 29.01.2004, the first respondent and others were travelling in the lorry bearing Registration No.TN 33 U 1663 for digging borewell at Erode. On the same day, at about 1.30 P.M., the said lorry met with an accident due to rash driving of the driver of the lorry. The respective claimants had sustained injuries and one person died on the spot. The first respondent herein have filed separate claim petitions claiming compensation before the Motor Accidents Claims Tribunal, Additional District Judge, FTC-2, Salem and the learned Judge has



awarded compensation in favour of the claimants. The main grievance of the appellant is that the accident had occurred due to rash and negligent driving of the driver of the lorry and the second respondent, who is the owner of the lorry, allowed more than 15 passengers to travel in the lorry by violating the policy condition. Without considering the negligence on the part of the driver of the lorry and owner of the lorry, the learned Judge also awarded compensation on the contrary to the policy conditions.

8. A perusal of the claim Petitions make it clear that the respective claimants specifically made averments that they are the employees of the second respondent. Admittedly, the second respondent is running a borewell company. As per the directions issued by the second respondent, the respective employees travelled in the lorry, which was insured with the appellant, for which, premium amount was paid by the second respondent covering 7 loadmen. All the facts were demonstrated before Tribunal and the Tribunal has also arrived at a conclusion that the respective first respondents are the employees of the second respondent and also he paid the insurance premium to the appellant insurance company.



9. This Court perused the decision relied upon by the learned counsel for the appellant as stated supra. On perusal of the same, it is seen that the policy is an Act Policy, which is a statutory one. If it is contrary to section 146 and 147 of M.V.Act, they have not entitled to claim any compensation from the insurance company. In the present case, the premium amount has already been paid by the second respondent for the employees also. The Tribunal has considered the same and also considered the nature of the injuries, awarded compensation to the claimants and the same is just and reasonable and this Court is not inclined to interfere with the said award passed by the Tribunal.

10. In the result, the order of the Motor Accidents Claims Tribunal, Addl. District Judge, FTC-2, Salem in MCOP. Nos.548 & 549/2004 dated 15.02.2008 is confirmed and this appeal is dismissed. The appellant/insurance company is directed to deposit the award amount as ordered by this Tribunal with interest, after deducting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimants in both the appeal are permitted to withdraw the same on making proper application



before the Tribunal. No costs. Consequently, connected Miscellaneous
Petition is closed.

09.10.2023

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Index : Yes

Speaking Order : Yes

To

The Motor Accidents Claims Tribunal,
Additional District Judge, FTC-2, Salem.



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M.DHANDAPANI,J.

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