



C.M.A.No.175 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.175 of 2013

and

M.P. Nos.1 of 2013

Branch Manager,
United India Insurance Company Ltd.,
Tirupattur.

... Appellant / 2nd Respondent

Vs.

1. Baby W/o. Annamalai
2. A. Michel S/o. Annamalai
3. A. Annamalai S/o. Annamalai
4. A. Manisha D/o. Annamalai ... Respondents 1 to 4 / Petitioners 1 to 4
5. R. Gangappan S/o. Raman 5th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 30.07.2012 made in O.P. No.151 of 2011 on the file of Motor Accidents Claims Tribunal (Additional District and Sessions Court/Fast Track Court No.III), Tirupattur at Vellore District.

For Appellant : Mr.D. Bhaskaran

For Respondents : No Appearance.

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the



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Insurance Company herein against the Judgment and decree dated 30.07.2012 made in O.P. No.151 of 2011 on the file of Motor Accidents Claims Tribunal / Additional District and Sessions Court, Tirupattur, Vellore District questioning the liability as well as the quantum.

2. The claim petition was filed under Section 166 of Motor Vehicle Act, 1988 by the legal representatives of one deceased Annamalai / respondents 1 to 4 in C.M.A. No.175 of 2013 claiming compensation of Rs.10 lakhs for the death of said Annamalai, occurred due to the road traffic accident that occurred on 11.07.2009.

3. The Tribunal, after hearing the arguments on both sides and upon considering the oral and documentary evidence, granted compensation amount of Rs.6,26,000/- with interest @ 7.5% per annum from the date of filing of petition till the date of deposit, holding the 2nd respondent insurance company liable to pay compensation.

4. The learned counsel appearing for the insurance company would strenuously contend that as per Ex.P.5 / Ex.R.1., Registration Certificate, the seating capacity including the driver is 3 and as the policy is 'Act only



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Policy' (Ex.P.5 / Ex.R.1) and as he was a workman, he is entitled for compensation only under The Workmen's Compensation Act.

5. To strengthen his arguments, the learned counsel has relied upon the following judgments:

5(i) The ***National Insurance Company Ltd., vs. Prembai Patel and others reported in 2005 ACJ 1323.***

5(ii) ***The Divisional Manager, The New India Assurance Company Limited, Vellore vs. M. Jayanthi and others reported in 2012 (2) TN MAC 41.***

6. Heard Mr. P. Bhaskaran, the learned counsel appearing for the appellant and perused the materials on record.

7. At trial, the wife of the deceased Annamalai, Tmt. Baby and one Mr. Rajkumar have been examined as PW1 and PW2. Ex.P1 to Ex.P.6 were marked. On the side of insurance company, a Staff of said company, Tr. Kumar was examined as RW1. Copy of the insurance policy and the investigator's report are Ex.R1 and Ex.R2.

8. It is the evidence of PW1, wife of deceased Annamalai that her



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husband was a Coolie and at the relevant point of time, he was working under one R. Gangappan, as a loadman. It is the evidence of PW2 that on 11.07.2009, he along with the deceased Annamalai and others, were sitting in the lorry to unload the sand and when the lorry was proceeding along Kakkangarai Road, their lorry driver drove the lorry in a negligent manner, suddenly applied brake and some of them fell from the lorry and all of them sustained injuries except Annamalai. It was made clear that they were working as load men at the relevant point of time.

9. The Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Prembai Patel and others reported in 2005 ACJ 1323*** has held as follows:-

“The deceased, aged about 35 years, was employed by the owner of the truck as a driver. The truck, while carrying heavy load of firewood overturned and resulted in death of its driver. On a claim petition filed by the legal heirs of the deceased under Section 166 of the Motor Vehicles Act, 1988, the Tribunal held that the deceased Sunder Singh himself is responsible for the accident and accordingly, dismissed the claim petition. Aggrieved, the claimants preferred appeal



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before the High Court and it was held that the accident took place due to the fact that the arm bolt of the truck broke down and not on account of any negligence on the part of the driver of the truck. Taking into account of the age, salary of the deceased, an amount of Rs.2,10,000/- was awarded as compensation, fastening the liability on the insurance company to satisfy the entire award. This judgment of the High Court was sought to be challenged by the appellant insurance company on sole ground that having regard to the insurance policy taken by the owner of the vehicle and provisions of Sections 147 and 149 of the Act, its liability is restricted to that, which is provided under The Workmen's Compensation Act, 1923 and it is not liable to satisfy the entire award made in favour of the claimants. According to the insurance company, the insured has paid only that much amount of premium as was required to cover the liability under the Workmen's Act. He had not paid such premium so as to cover the entire amount of liability qua an employee and, therefore, the liability of the appellant would be a restricted one and it would not be to satisfy the entire award made in favour



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of the claimants. Per contra, on the side of respondents, it was submitted that the truck was comprehensively insured and, therefore, the insurance company is liable to satisfy the entire award made in favour of the claimants and the view taken by the High Court is perfectly correct”.

The Apex Court further held that:

“A person, who has sustained injury or where death has resulted from an accident all or any of the legal representatives of the deceased can claim compensation by moving an application under Section 166 of the Act by filing a claim petition before the Motor Accident Claims Tribunal. Section 3 of the Workmen's Compensation Act lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under the Act and also under the Workmen's



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Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. The claim petition had been filed by respondents 3 to 6 claiming compensation for the death of Sunder Singh, who was an employee of respondent No.2, in an accident arising out of and in the course of his employment. Therefore, they could claim compensation under either of the Acts. But they chose the forum provided under the Motor Vehicles Act..... But the claim petition before the Motor Accident Claim Tribunal is an action in tort and the injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or deceased and they were not responsible for the accident. The exception to this general rule is given in Section 140 of the Act where the legislature has specifically made provisions for payment of compensation on the principle of no fault liability".

The Hon'ble Apex Court held that



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"....the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy, the liability of the appellant would be restricted to that arising under The Workmen's Compensation Act. The judgment of the High Court needs to be modified accordingly".

Therefore, the injured or the legal heir of the deceased are at liberty to file their claim petitions either under the Workmen Compensation Act or under the Motor Vehicle Act subject to the policy conditions.

10. The deceased was working as a Coolie and met with an accident and died. The legal representatives of the deceased Annamalai have preferred Claim petition under Section 166 of Motor Vehicles Act, 1988 claiming compensation for the death of the said Annamalai. Ex.P.4 / Ex.R1 is the copy of the insurance policy. It is a "Liability only Policy". On the side of the insurance company, a Staff of insurance company was examined as RW1. It is the evidence of RW1 that as per the terms of the policy, premium is paid for the driver, cleaner and for 5 coolies. It is the evidence of RW2, the Investigator that 4 persons got injured and one namely Annamalai died. On perusal of Ex.R.1 policy, it is seen that



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premium has been collected from 5 workmen. In this accident, from the evidence of RW2, it is clear that 4 persons got injuries and one person namely Annamalai died. Further more, a careful perusal of Ex.R1 policy reveals that as per the terms of the policy, the liability is Rs.7,50,000/-. Hence, the contention of the insurance company that the respondents are not covered under policy is totally unsustainable.

11. Further, insofar as the quantum and interest in order to give complete justice to the legal heirs of the deceased Annamalai, the compensation granted by the learned Tribunal is confirmed.

12. Accordingly, the respondents in C.M.A. No.175 of 2013 are entitled to the entire compensation amount of Rs.6,26,000/- awarded by the Tribunal with interest at 7.5% per annum from the date of numbering of the petition i.e.29.10.2010 to till the date of realisation.

12. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

Connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is **confirmed**.



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(iii) The appellant / Insurance Company is directed to deposit the compensation amount i.e., **Rs.6,26,000/-** (less the amount already deposited if any) together with interest at 7.5% per annum from the date of numbering of the petition i.e..29.10.2010 to till the date of realisation in M.C.A.T. O.P.No.151 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court/Fast Track Court No.III), Tirupattur at Vellore District, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents 1 to 4 / claimants are at liberty to withdraw the same on filing of cheque petition.

29.09.2023

Index : Yes/No
Speaking / Non-speaking order
mjs

To:

1. The Motor Accident Claims Tribunal
(Additional District and Sessions Court/Fast Track Court No.III),
Tirupattur at Vellore District.



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



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R.KALAIMATHI, J.,

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