THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

**C.M.A.No.1744 of 2019**
**and**
**C.M.P.No.5522 of 2019**

Branch Manager,
Tata AIG General Insurance Company Ltd.,
Registered Office Peninsula Corporate Park,
Pirmala Tower, 9th Floor, Ganpatrao Kadam Marg,
Lower Parel, Mumbai - 400 013. ...Appellant

Vs.

1.Vijayalakshmi

2.Thulasi

3.Minor Aditya
(3rd respondent minor, rep. by his
next friend and Mother Vijayalakshmi)

4.Soundirarajan ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28th day of September, 2018, made in MCOP.No.80 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court), Krishnagiri.

For Appellant : Mr.K.Vinod

For Respondents : Mr.V.Vijayakumar for R1 to R3

R4 - Served- No appearance

## JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal. Challenge is to the award of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri made in MCOP.No.80 of 2014 granting a compensation of Rs.27,87,520/- for the death of one L.Venkatesan in a motor accident that occurred on 11.09.2013.

2.According to the claimants, the said Venkatesan, who was employed in Salem Industrial Plastics had taken the goods belonging to his Company in a pick up Truck bearing Registration No.TN-54-F-4044 from Chennai to Salem. The said vehicle was being driven by one M.Kathiravan. When they going near Sengundharpettai near Madurantakam, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against the lorry that was parked on the road side. As a result of the impact, Venkatesan suffered grievous injuries and died on the spot. A case was registered against the driver of the pick up Van under Section 279 & 304-A of IPC. Terming negligence on the part of the driver of the pick up Van as the cause of the accident and justifing the quantum of compensation on the basis that the deceased was drawing a salary of Rs.20,000/- per month, the claimants sought for Rs.50,00,000/- as compensation.

3.The Insurance Company resisted the claim contending that the driver of the pick up Van did not have a valid driving license and the deceased Venkatesan was not an authorised passenger in the pick up Van. He was a gratuitous, unauthorized passenger in a goods vehicle and therefore, the Insurance Company is not liable to pay the compensation.

4.At trial, before the Tribunal, the wife of the deceased Venkatesan was examined as P.W.1, one Sivagnanam (HR Manager) of the employer of the deceased namely, M/s. Salem Industrial Plastics was examined as P.W.2 and one Suresh, an eye-witness was examined as P.W.3. Exs.A1 to A17 were marked on the side of the claimants. The First Information Report was marked as Ex.A1. The Insurance Company examined its Official, one Faisuddin, as R.W.1 and copy of the Insurance Policy was marked as Ex. R1. Relying on the First Information Report and the evidence of P.W.3, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the pick up Van.

5.On the liability of the Insurance Company, the Tribunal found that there is some evidence to show that the deceased was travelling along with the goods belonging to his employer as an authorized representative of the employee. Therefore, it rejected the contention of the Insurance Company that the deceased was an unauthorized passenger in a goods vehicle.

6.We have heard Mr.K.Vinod, learned counsel appearing for the appellant and Mr.V.Vijayakumar, learned counsel for the respondents / claimants. The owner of the vehicle though served, is not appearing either in person or through counsel, duly instructed.

7.Mr.K.Vinod, learned counsel appearing for the appellant would vehemently contend that the Tribunal erred in concluding that the deceased was an authorized representative of the owner of the goods. He would submit that there is no evidence to that effect and the Tribunal has gone by assumptions. The learned counsel would submit that neither in the First Information Report nor in the evidence of P.W.1 or P.W.2, there is any statement to the effect that the deceased was authorized representative of the owner of the vehicle. In the absence of such evidence, according to the learned counsel, the Insurance Company cannot be made liable.

8.Contending contra, Mr.V.Vijayakumar, learned counsel for the claimants would submit that in the First Information Report, there is a statement to the effect that the deceased travelled in the vehicle of the Company. He would also point out that PW1 in her proof affidavit has specifically stated that he had taken the goods belonging to the Company and travelled in the van belonging to the Company. He would also point out that RW1 Faisuddin has in his cross-examination has admitted that there were two persons travelling in Bolero Van and that it is stated in the First Information Report that they were travelling along with the goods belonging to M/s. Salem Industrial Plastics. According to the learned counsel the combined effect of the evidence would be that the van was travelling with the goods belonging to the employer as the representative of the owner of the goods and therefore he would be covered by the policy. We have considered the rival submissions.

9.No doubt there is no direct evidence to show that the deceased was travelling as a representative of the owner of the goods in order to be covered by the Insurance policy. The Hon'ble Supreme Court in ***Sanjeeve Kumar Vs. National Insurance Company*** reported in ***2013 ACJ 1*** while deciding the extent of cover of the persons who are travelling in goods vehicle, the Hon'ble Supreme Court has observed as follows:-

> *"24.It is worthy to note that sub-clause (i)(c) of the proviso refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of sections 147 and 167 the intendment of the legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the iability of the employee except an employee covered under the 1923 Act and that too in respect of*

*an employee carried in a vehicle. To put in differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy covers only the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kinds of employee and, therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of the goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured."*

From the above, it is clear that a person who travels in a goods vehicle as a representative of the owner of the goods is covered by the policy.

10.Adverting to the case on hand, there is some evidence to show that Venkatesan had travelled in the vehicle at the instance of his employer. The First Information Report states that the vehicle belongs to the employer. No doubt the RC book is in a different name. PW1 in her evidence has stated that he was travelling in the vehicle belonging to the employer along with the goods belonging to the employer. There is no cross-examination of

PW1 on that aspect, except a suggestion that her claim is not correct, which has been duly denied by her. RW1 has in his examination admitted that the First Information Report contains a statement that the deceased was travelling in the employer's vehicle. This evidence in a claim petition under the Motor Vehicles Act where we look for some evidence only and not proof beyond doubt, in our opinion, would be sufficient for us to conclude that the deceased was travelling as a representative of the owner of the goods. After all the claim for grant of compensation under the Motor Vehicles Act to the victim of the motor accident is a benevolent or a beneficial legislation. A dogmatic approach that would negate the very object of the provisions cannot be adopted by the Courts. While liberal approach is the Rule, we cannot at the same time overlook the cases where attempt is made to make the Insurance Companies liable by foul means. The Tribunals and Courts will have to come down heavily upon such attempts.

11.In the case on hand, we find that the evidence available would be sufficient to conclude that the deceased was travelling as the representative of the owner of the goods. There is nothing in evidence which would militate against such a presumption. We find that the Tribunal was therefore, justified in concluding that the Insurance Company would be liable to pay the compensation under the policy. We thus, see no merit in the appeal. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. However, there shall be no order as to costs.

**(R.S.M., J.)** **(N.S., J.)**
01.12.2023

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To:-

The Motor Accident Claims Tribunal,
Additional District and Sessions Court,
Krishnagiri.

**R.SUBRAMANIAN, J.**
**and**
**N.SENTHILKUMAR, J.**

KKN

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