



C.M.A.No.1859 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1859 of 2021
and
Civil Miscellaneous Petition No.10007 of 2021

United India Insurance Company Ltd.,
No.44-D, Romeo Complex,
Uthamapalayam Road, Opp. Bus Stand,
Bodinayakkanur – 625 513.

... Appellant / 3rd Respondent

Vs.

1. Ranganayaki
2. Minor Nagaraj
3. Minor Pommaiyasamy ... Respondents/Petitioners
[Minor claimants are represented by their Mother
Ranganayaki, the 1st respondent herein]
4. Vasagar
5. G.Gurusamy ... Respondents / Respondents
[R4 and R5 remained exparte before Tribunal.
Hence notice to R5 & R6 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.02.2018 made in M.C.O.P.No.449 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.



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For Appellant : M/s. I. Malar
For R1 to R3 : M/s. Saleem Fathima P. T
For R4 : No appearance
For R5 : Mr. Ramesh Kumar G. Chopda

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.449 of 2011, dated 16.02.2018, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 03.09.2011 at about 20.45 hours the deceased was travelling in the Tractor bearing Registration No.TN 60 Y 4500 along with Vinayagar god statue, at that time, the first respondent, who is the driver of the Tractor drove it in rash and negligent manner and suddenly applied brake, which resulted in the deceased fell down and sustained fatal injuries and subsequently, succumbed to death. In



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this regard, a criminal case was also registered against the first respondent in Crime No.460 of 2011 under Section 304 A IPC on the file of the Chinnamannur Police Station.

4. The owner of the tractor has not contested the claim and was remained ex-parte. The third respondent - Insurance Company has filed counter and contended that the Trailer was not insured with them and the deceased was not permitted to travel in the Tractor, that too, as a gratuitous passenger in the tractor. Hence the Insurance Company is not liable to indemnify the owner of the vehicle. They have taken a stand that there is a violation of policy conditions and the compensation claimed by the claimants is also on the higher side hence prays to dismiss the claim.

5. After considering the evidences placed on record, the Tribunal in Point No.1 has held that the driver of the Tractor has driven it in rash and negligent manner, which resulted in causing death of the deceased. As far as the responsibility for paying compensation is concerned, the Tribunal by relying on the judgement of this Court in ***New India Assurance Company Limited vs. Murugan [2017 (1) TN MAC 184]*** and held that the



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deceased herein shall be treated as a third party and accordingly quantified the compensation and awarded a sum of Rs.13,50,000/- as compensation to be paid by all the respondents jointly and severally.

6. Aggrieved over the direction of the award, to indemnify the owner of the vehicle, the Insurance Company has filed this appeal on the ground that the deceased herein is not an authorized passenger and in the Tractor, he has travelled as an unauthorized passenger hence, the Insurance Company is not liable to indemnify the owner of the vehicle. They have also stated that the tractor which was insured for agricultural purpose, has been used for non-agricultural purpose hence there is also a violation of yet another policy condition, hence , the Insurance Company is not liable to pay the compensation.

7. M/s. Saleem Fathima P. T, learned counsel for the claimants has submitted that even though, there is evidence placed on record to show that the deceased was travelled in the Trailer and the same is also insured, the Tractor and Trailer has to be treated as one unit and admittedly, the tractor is insured with the third respondent and the third respondent is liable



to pay the compensation on behalf of the owner of the vehicle. The owner of vehicle has also appeared and supported the case of the claimant and held that since the Trailer and Tractor has been treated as one unit and the tractor is insured with the third respondent, the Insurance Company is liable to indemnify the owner of the vehicle.

8. I have considered the rival submissions made on both sides and also perused the records.

9. Admittedly, the deceased herein has travelled in the Tractor while transporting the Vinayagar Idol as a gratuitous passenger and as per the Judgment of the Apex Court in the case of ***New India Assurance Co.Ltd., Vs. Asha Rani and Ors. [MANU/SC/0474/2001] [2001 (6) SCC 724]*** and in the case of ***National Insurance Co.Ltd. Vs. Baljit Kaur [2004 (1) CTC 210 : 2004 (2) SCC 1 : 2004(2) SCC 1 : AIR 2004 SC 1340]*** and the Judgment of this Court in ***Bharti Axa General Insurance Company Limited vs. Aandi and Others*** reported in ***2018 (2) TN MAC 731 (DB)*** gratuitous passenger travelled in goods vehicle is not eligible for compensation from the Insurance Company.



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10. Recently, the Full Bench Judgment of the **Karnataka High Court** in **2021 SCC Online Karnataka 12137 [Gandhilingappa @ Gandhilinga and Another vs. K.Guleppa and Others]** in paragraph No.21 by following the judgment of the Hon'ble Apex Court passed in **2004 (8) SCC 697 National Insurance Company Ltd., vs Chinnama and others** held that the person travelled in the Tractor Trailer would not fall within the category of persons travelled along with the goods and they could not be termed as third parties.

15. In paragraph No.21 which reads as under:

“21. In fact, the issue whether a tractor is a goods carriage arose for consideration before a Bench of three Hon'ble Judges of the Apex Court in the case of V.Chinnamma, (supra). In paragraph 15 and 16, the Apex Court has dealt with the issue. In categorical terms, it has been held that a tractor by itself is not a goods carriage. However, in paragraph 16, the Apex Court observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the M.V.Act. The observations made by the Apex Court in paragraphs 15 and 16 are relevant which read thus:

“15. Furthermore, a tractor is not even a goods carriage. The expression “goods carriage’ has been defined in Section 2(14) to mean

“any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for



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the carriage of goods”

whereas, “tractor” has been defined in Section 2(44) to mean.

“a motor vehicle which is not itself constructed to carry and load (other than equipment used for the purpose of propulsion); but excludes a roadroller”.

“Trailer” has been defined in Section 2(46) to mean

“any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle”.

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of “goods carriage” as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani and other decisions following the same, as the accident had taken place on 24.11.1991 i.e., much prior to coming into force of the 1994 amendment.”



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11. The full bench Judgment of the Karnataka High Court, it is held that since the tractor has seating capacity of only one person and the person who travelled along with the driver of the tractor shall be treated as an unauthorized passenger and he could not be treated as a third party. Similarly the persons travelled in the trailer also could not be treated as a third party since the trailer also is not permitted to transport persons which has to be used only for agricultural purpose.

12. In both sides, the Tribunal has mislead that the deceased shall be treated as a third party as held by this Court. Since the deceased is only treated as an unauthorized passenger, the owner of the vehicle alone is liable to pay compensation for the tortuous act committed by its driver and the Insurance Company is not liable to indemnify him.

13. The learned counsel for the claimants has relied on the recent Judgment passed in ***Dhondubai vs. Hanmantappa Bandapa Gandigude [2023 (2) TN MAC 300 (SC)]*** wherein, the Apex Court has invoking powers under Article 142 of the Code of Civil Procedure has granted compensation to the claimants therein who were travelled in the un-



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insured trailer attached with them. Since the Apex Court has granted compensation by invoking extraordinary power and the same could not be considered to extend the same benefits to the claimant herein. Hence the contention of the claimant is liable to be rejected and the appeal is to be allowed.

14. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The fifth respondent herein /owner of Tractor is directed to pay the compensation awarded by the Tribunal for a sum of Rs.13,50,000/- to the claimants and the appellant/Insurance Company is permitted to withdraw the amount, which was lying in the credit of M.C.O.P.No.449 of 2011, if any, already deposited, by making proper application. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition stands closed.

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Index:Yes
Speaking Order:Yes



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Neutral Citation Case: Yes

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K.RAJASEKAR,J.

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To:

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathyamangalam.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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