IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.1655 & 1656 of 2018
and
CMP.Nos.13072 & 13073 of 2018

The Branch Manager
The Oriental Insurance Co. Ltd.,
Branch Office
Dharmapuri - 636 701. ... Appellant in both CMAs

Vs.

1. Theethiammal
   W/o.Krishnan @ Krishnappa

2. Pachamuthu
   S/o.Krishnan @ Krishnappa

3. Kamala
   D/o.Krishnan @ Krishnappa

4. Settu
   S/o. Krishnan @ Krishnappa

5. Minor Ranjitham
   D/o. Krishnan @ Krishnappa

6. Minor Anbumathi
   D/o. Krishnan @ Krishnappa

7. Minor Sakthi
   D/o.Krishnan @ Krishnappa
   [Minors 5 to 7 represented by mother and next
   friend 1st respondent]

8. Vijay
   S/o.Selvam

9. P.Selvam
   S/o.Pappannan ... Respondents in CMA.No.1655/2018

1. Perumal (died)
   S/o.Mariyappan
   [R1 died. Respondents 2 to 5 who are already on record
   as L.Rs of the deceased R1-Perumal vide order dated
   10.07.2023 in C.M.A.Nos.1655 and 1656 of 2018]

2. Madhaiyan
   S/o.Perumal

3. Dhanam
   D/o.Perumal

4. Vadivel
   S/o.Perumal

5. Minor Arumugam
   S/o.Perumal
   [Minor Rep.by father and next
   1st respondent herein]

6. Vijay
   S/o.Selvam

7. P.Selvam

S/o.Pappannan ... Respondents in CMA No.1656/2018

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgments and decrees dated 30.06.2014 made in M.C.O.P.No.20 of 2013 and M.C.O.P.No.21 of 2013 respectively on the file of the Motor Accidents Claims Tribunal, District Judge, Special District Court, Krishnagiri.

For Appellant : Mr.M.J.Vijayaraghavan
in both appeals

For Respondents : Mr.Mukund R. Pandian
for R1 to R7 in CMA No.1655 of 2018
for R2 to R5 in CMA No.1656 of 2018

R8 & R9 - No appearance in CMA No.1655/2018
R6 & R7 - No appearance in CMA No.1656/2018
R1 - Died in CMA No.1656/2018

COMMON JUDGMENT

Challenging the common Award dated 30.06.2014 passed by the Motor Accidents Claims Tribunal, District Judge, Special District Court, Krishnagiri in M.C.O.P.No.20 of 2013 and M.C.O.P.No.21 of 2013 respectively, the present appeals have been filed by the Insurance Company.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The facts that are necessary to decide the issue in these appeals are as follows:

(i) On 15.11.2009 at 17.30 hours the deceased Krishnan @ Krishnappa S/o.Pachamuthu, Kalyani W/o.Perumal and two others were travelling in a Tractor-cum-trailer bearing Registration No.TN-29-V-4962 as load men. When the said Tractor-cum-trailer was proceeding in front of LAL Company in Bangalore to Hosur N.H.7 Road, the driver/first respondent (Vijay) drove the Tractor in a rash and negligent manner and took a sudden "U" turn in the right side, due to that, the trailer of the tractor capsized on the left side of the road. Due to the said impact, Krishnan @ Krishnappa and Kalyani and two others sustained injuries. One Kalyani sustained fatal injuries and died on the spot. The said Krishnan @ Krishnappa sustained fatal injuries and while taking him to the hospital he died and other injured persons took first-aid in the Government Hospital, Hosur and then they were admitted in the Bangalore Hospital for further treatment. The postmortem of the deceased were conducted at Government Hospital, Hosur.

(ii) Seeking compensation, the legal heirs of the deceased Krishnan @ Krishnappa filed claim petition in M.C.O.P.No.20 of 2013 for claiming compensation of Rs.10,00,000/-, and the legal heirs of the deceased Kalyani filed the claim petition in M.C.O.P.No.21 of 2013 claiming compensation of Rs.8,00,000/-.

4. The first respondent/driver and the second respondent/owner of the Tractor-cum-Trailer remained *ex-parte* before the Tribunal.

5. The said claim petitions were resisted by the appellant/ Insurance Company by filing a counter statement denying the manner of accident as projected by the claimants in the claim petitions. They also denied the avocation and income mentioned in the claim petitions. It is the specific defence of the Insurance Company that the driver of the said Tractor-cum-Trailer did not possess any valid driving licence, at the relevant point of time and the deceased were travelling as unauthorized

passengers and hence, the Insura6nce Company is not liable to pay compensation. Thus, they sought for dismissal of the claim petitions.

6. A joint trial was conducted in both the claim petitions. On the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P4 were marked. On the side of the Insurance Company, R.W.1 was examined and Ex.R1 to Ex.R3 were marked.

7. The Tribunal after analysing the entire oral and documentary evidence passed an award for a sum of Rs.8,68,800/-, as against the claim of Rs.10,00,000/- made in MCOP.No.20 of 2013 for the death of Krishnan @ Krishnappa. Likewise, the Tribunal awarded a sum of Rs.4,74,400/-, as against the claim of Rs.8,00,000/- made in MCOP.No.21 of 2013 for the death of Kalyani and directed the respondents 1 to 3 therein to pay compensation.

8. Challenging the liability, the Oriental Insurance Company Limited has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company

submitted that as per the evidence of R.W.1 on the date of accident, the Tractor-cum-Trailer was used for delivering the sand for construction purpose, and it was not used for agricultural purpose. Further, as per F.I.R, the second respondent therein/owner of the Tractor with Trailer allowed his son/first respondent therein to drive the said Tractor along with Trailer, which was loaded with sand. However, the first respondent therein did not possess any valid driving licence, at the time of the accident. Further, the deceased persons and two others were travelling in the sand loaded trailer as unauthorized passengers and hence, the owner of the said Tractor violated the policy conditions. Therefore, the Insurance Company is not liable to indemnify the owner of the Tractor. The Tribunal failed to consider all these facts, but only on the sympathetic ground awarded compensation and directed the appellant/Insurance Company to pay compensation. Therefore, the order of the Tribunal is erroneous and the same is liable to be set aside.

10. The learned counsel for the respondents/claimants submitted that the deceased persons and two others were travelling in the Tractor-cum-Trailer as load men to unload the sand. In the said proceedings,

they met with an accident, due to the rash and negligent driving of the first respondent therein. The said Tractor with Trailer was insured with the appellant herein/Insurance Company and the policy was in force, at the relevant point of time. He further submitted that in agricultural activities, load men are used to travel along with the goods, for loading and unloading the agricultural products. On the date of accident, the said Tractor was used for agricultural purpose and the deceased persons had travelled as load men and hence, the Insurance Company is liable to pay compensation. The Tribunal has rightly fixed the liability on the Insurance Company and therefore, there is no merit in these appeals and the same are liable to be dismissed.

11. Heard the learned counsel for both sides and perused the materials available on record.

12. The accident was admitted and the offending vehicle was insured with the appellant was also admitted. Now, the only question that

arises for consideration in these appeals are as to whether the liability fixed on the Insurance Company is sustainable.

13. The main defence taken by the learned counsel for the appellant/Insurance Company is that the deceased and the injured claimant travelled as unauthorised passengers in the goods vehicle, which is meant for carrying goods and the driver drove the said vehicle without valid driving licence, which is in violation of policy conditions and hence, the Insurance Company is not liable to pay compensation.

14. On a perusal of the records, it would reveal that the offending vehicle is a goods carrying vehicle and the driver, who drove the offending vehicle did not possess any valid driving licence. There is no contra evidence to prove that the driver possess valid driving licence, at the relevant point of time. Even the Insurance Company had sent notice to the second respondent/owner of the Tractor to furnish the driving licence of the driver of the Tractor, through RPAD and the same was returned with an endorsement "no such person in the address". Further, respondents 1 and 2

therein did not appear before the Tribunal to defend their case and they remained *ex-parte*. The terms and conditions of the policy shows that the owner of the insured vehicle should not allow the person, who did not possess valid driving licence to drive the insured vehicle. In the present case, the owner of the Tractor violated the policy conditions and allowed his son to drive the vehicle. Further, the Tractor is not a goods carrying vehicle and it is only meant for carrying agricultural proceeds. The Tractor and Trailer are peculiar in nature and they are different and they have to be insured individually. Respondents 1 and 2 therein have not denied that the deceased persons were not travelling as load men or employees of the second respondent therein. Therefore, the insurance policy does not cover for the unauthorised persons.

15. Considering the facts and circumstances, this Court finds that the owner of the vehicle violated the policy conditions and allowed the deceased and others to travel as unauthorised passengers and also they did not defend their case to prove that the accident had not occurred due to the rash and negligent driving of the first respondent/driver and hence, this

Court is of the opinion that the owner of the vehicle is solely liable to pay compensation. The Tribunal ought not to have fixed the liability on the Insurance Company and the findings of the Tribunal in fixing the liability on the Insurance Company is not legally sustainable. Hence, the appellant/ Insurance Company is exonerated from their liability and the claimants are entitled to get compensation from the owner of the Tractor bearing Registration No.TN-29-V-4962.

16. The quantum of compensation awarded by the Tribunal is "just and fair" and hence, the same is confirmed in both the appeals.

17. In view of the above modification, these Civil Miscellaneous Appeals are allowed by setting aside the Award and decree passed in M.C.O.P.Nos.20 and 21 of 2013, insofar as the fixation of liability on the Insurance Company is concerned. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18. The owner of offending vehicle is directed to deposit the

entire award amount along with 7.5% interest and costs awarded by the Tribunal, from the date of claim petitions till the date of deposit within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants as held in the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the award amount in the ratio mentioned by the Tribunal, less the amount already withdrawn, if any, together with interest and costs. The appellant/ Insurance Company is permitted to withdraw the amount already deposited, if any with accrued interest.

20.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The District Judge,
   Special District Court for Motor Accident Claims Cases
   Krishnagiri.

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

P.VELMURUGAN, J.

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C.M.A.Nos.1655 & 1656 of 2018

20.09.2023