IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.1720, 1721 & 1722 of 2018
and
CMP Nos.13328 to 13330 of 2018

The Oriental Insurance Company Ltd.,
BLA Building
No.12A, Kovai Road
Karur - 639 002. ... Appellant in all CMAs

Vs.

1. Minsayee
   W/o.Arumugam

2. Muniappan
   S/o.Thirumuthiyapillai

3. Muthukrishnan
   S/o.Allimuthu

4. United India Insurance Co. Ltd.,
   Nehruji Road,
   Villupuram - 605 602. ... Respondents in CMA.No.1720/2018

1. Pichammal
   W/o.Billa @ Chinnappan (late)

2. Muniappan

S/o.Thirumuthiyapillai

3. Muthukrishnan
S/o.Allimuthu

4. United India Insurance Co. Ltd.,
Nehruji Road,
Villupuram - 605 602. ... Respondents in CMA Nos.1721 & 1722 of 2018

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 17.03.2014 made in M.C.O.P.No.802 of 2005, M.C.O.P.No.803 of 2005 and M.C.O.P.No.820 of 2005 respectively on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Villupuram.

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

For Respondents in all appeals : Mr.K.Arunagiri, for R1
Mr.A.Dhiraviyanathan, for R4
R2 - substituted service
(paper publication filed)
No appearance
R3 - No appearance

C O M M O N J U D G M E N T

The Oriental Insurance Company Limited has filed these present appeals challenging the common Award dated 17.03.2014 passed in M.C.O.P.Nos.802, 803 and 820 of 2005 respectively on the file of the Motor

Accidents Claims Tribunal, Principal District Judge, Villupuram.

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

3. The brief facts of the case are as follows:

On 16.08.2005 the claimant-Minsayee (MCOP.No.802 of 2005), one Indira W/o.Varnamuthu, the claimant-Pichammal (MCOP.No.805 and 820 of 2005) and her husband Billa @ Chinnapaiyan were proceeding from Chennai to attend a funeral function at to Chinnasalem by a lorry bearing Registration No.TN-47-B-4999, belonging to the first respondent and insured with the second respondent/Oriental Insurance Company. On 16.08.2005 and 17.08.2005 at around 4.00 a.m when the lorry was proceeding on Trichy-Chennai National Highway near Janakipuram Pertrol Bunk, the driver, who drove the said lorry in a rash and negligent manner and dashed against the stationed lorry bearing Registration No.TN-27-Z-2802, belonging to the third respondent and insured with the fourth respondent/United India Insurance Company Limited. Resultantly one

Billa @ Chinnapaiyan sustained multiple injuries and died on the spot and the claimants herein and others sustained grievous injuries and immediately, they rushed to Villupuram Government Hospital for treatment. Then they were admitted in the Tindivanam Government Hospital for further treatment. The case was registered against the first respondent's lorry driver.

(ii) Seeking compensation against the owner of the lorries and its insurers Minsayee filed a claim petition in MCOP.No.802 of 2005, claiming a sum of Rs.3,00,000/-. Pichammal filed a claim petition in MCOP.No.803 of 2005, claiming a sum of Rs.5,00,000/- and also filed the claim petition in MCOP.No.820 of 2005, claiming a sum of Rs.10,00,000/- for the death of her husband Billa @ Chinnapaiyan.

4. Before the Tribunal, the first respondent/owner of the lorry bearing Registration No.TN-47-B-4999 and the third respondent/owner of the lorry bearing Registration No.27-Z-2802 remained *ex-parte*.

5. The claim petitions were resisted by the second

respondent/Oriental Insurance Company Limited 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.

6. The claim petition in MCOP.No.820 of 2005 was resisted by the fourth respondent/United India Insurance Company by filing a counter statement denying the manner of accident as projected by the claimants and also avocation and income mentioned in the claim petitions. It is the specific defence of the Insurance Company that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's lorry and FIR also registered against him and hence, they are not liable to pay compensation. Thus, they sought for dismissal of the claim petitions.

7. A joint trial was conducted and in all the claim petitions, on the side of the claimants P.W.1 to P.W.3 were examined and Exs.P1 to P21

were marked. On the side of the respondents, no oral evidence was adduced and Ex.R1 was marked.

8. The Tribunal after analysing the entire oral and documentary evidence and passed an award for a sum of Rs.50,000/-, as against the claim of Rs.3,00,000/- made in MCOP.No.802 of 2005. Likewise, the Tribunal awarded a sum of Rs.1,00,000/-, as against the claim of Rs.5,00,000/- made in MCOP.No.803 of 2005 and also awarded a sum of Rs.5,86,000/-, as against the claim of Rs.10,00,000/- made in MCOP.No.820 of 2005 for the death of Billa @ Chinnapaiyan.

9. Challenging the liability and quantum of compensation awarded by the Tribunal, M/s.Oriental Insurance Company Limited, has filed the present appeals.

10. The learned counsel for the appellant/Oriental Insurance Company Limited submitted that the deceased, injured claimants and others were travelling as unauthorised passengers in the goods vehicle to attend the

funeral function of their relative at Chinnasalem and during that time, the accident had occurred and that the claimants and others sustained injuries and the husband of the claimant in MCOP.No.803 and 820 of 2005 succumbed to injuries. The lorry bearing Registration No.TN-47-B-4999 is a goods carrying vehicle, either the owner of the goods or agents of the goods only permitted to travel in the goods vehicle. Whereas in the present case, the claimants and others travelled as unauthorised passengers and there is no coverage to unauthorised passengers of the goods vehicle. The claimants themselves admitted in their claims petitions that they were travelled in the said vehicle to attend the funeral function of their relative. Therefore, the admitted fact need not be proved, the admission is the best piece of evidence and hence, the Insurance Company is not liable to pay compensation.

11. The learned counsel for the respondents/claimants submitted that in the F.I.R and during trial, the claimants have stated that the claimants and the deceased travelled along with the goods i.e. boxes of tiles as load men, at the time of accident and only due to the rash and

negligent driving of the driver of the first respondent's lorry, the accident had occurred. As per the policy conditions, there is a coverage with reference to the five load men, who were travelling in the insured vehicle. As the claimants and the deceased travelled as load men, the appellant/Insurance Company is liable to pay compensation. The Tribunal, after appreciating the entire materials, rightly fixed liability on the owner of the offending vehicle/the first respondent therein and as an insurer, the appellant/Insurance Company is liable to indemnify the loss caused by the insured vehicle. Therefore, there is no merit in these appeals and the same are liable to be dismissed.

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

13. Admittedly, the injured claimants and the deceased were travelling in the first respondent's lorry bearing registration No.TN-47-B-4999 as load men. At the relevant point of time, the driver, who drove the first respondent's lorry, in a rash and negligent manner and dashed against

the stationed lorry bearing Registration No.27-Z-2802, and hence, the claimants sustained injuries and one load man succumbed to injuries.

14. Though the learned counsel for the appellant/Oriental Insurance Company Limited vehemently contended that even if the claimants and the deceased are the load men as per the policy conditions, the appellant/Insurance Company is liable to pay compensation to the claimants only if the accident has occurred at the time of loading or unloading. However, the accident in the present case has occurred, when the claimants were travelling in the lorry. Thus, the Insurance Company is not liable to pay compensation.

15. On a perusal of the records, it is seen that the injured and deceased are travelling as load men in the goods carrying vehicle. At the time of accident insurance policy was in force and premium also paid for driver + four load men. As per the policy conditions, there is a coverage with reference to the load men, who were travelling in the insured vehicle. Further, there is no contra evidence to prove that the injured and deceased

had travelled as unauthorised passengers, whereas, the claimants have proved that they had travelled as load men. In the absence of any contra evidence, the material would go to show that they had travelled in the offending vehicle only as load men and that the insurance policy would cover the liability of the insurer for payment of compensation for the load men in the said lorry. Since there is no violation of policy conditions as far as the first respondent's lorry is concerned, the Tribunal rightly fixed the liability on the appellant/Oriental Insurance Company. The Tribunal also held that neither the third respondent therein and the fourth respondent therein is liable to pay any compensation, they were exonerated from the liability.

16. This Court as a final Court of fact finding re-appreciated the entire materials and finds that the injured claimants and the deceased were travelling as load men in the offending vehicle and the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's therein lorry bearing Registration No.47-B-4999. Since there is

no violation of policy conditions, as an insurer of the offending vehicle, the appellant/Insurance Company is liable to pay compensation.

17. The quantum of compensation is concerned, the amounts awarded by the Tribunal are "just, fair and reasonable" and hence, they are confirmed.

18. Considering the above facts and circumstances, this Court does not find any perversity or infirmity in the Award passed by the Tribunal and there is no merit in these appeals and the same are liable to be dismissed. These appeals are dismissed, accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.Accordingly, the appellant/Oriental Insurance Company Limited 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, less the amount already deposited, if any, within a period of four 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, without filing any formal application.

20.09.2023

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

To

1. The Principal District Judge,
   Motor Accidents Claims Tribunal
   Villupuram.

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

P.VELMURUGAN, J.

ms

C.M.A.Nos.1720, 1721 & 1722 of 2018

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