



C.M.A.No.1857 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1857 of 2018 and
C.M.P.No.14363 of 2018

The Divisional Manager,
National Insurance Company Limited,
Pondicherry.

...Appellant

Vs.

1. Kannammal
2. Kalidass
3. Meganathan
4. Minor Vennila
(Minor represented by her mother Kannammal
as next friend and natural guardian)

5. Shanmugavalli

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 02.08.2017 in M.C.O.P.No.254 of 2016 passed by the learned Motor Accidents Claims Tribunal, I Additional District Judge, Tindivanam.



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For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.K.Subburam for RR1 to 4
No Appearance for R5

JUDGMENT

This appeal is filed by the Insurance Company challenging the liability and quantum of compensation awarded by the Tribunal in M.C.O.P.No.254 of 2016 dated 02.08.2017.

2 The appellant is the Insurance Company, respondents 1 to 4 are claimants and the fifth respondent is owner of the offending vehicle. The respondents 1 to 4/claimants filed claim petition in M.C.O.P.No.254 of 2016 seeking compensation of Rs.50,00,000/- for the death of one Pachiappan, who is son of the respondents 1 and 2 and brother of respondents 3 and 4.

3 According to the claimants on 13.05.2016 when the deceased was travelling in a lorry bearing Reg.No.TN 39 K 1690 as cleaner at Tindinavanam National Highway near Salavathi Balaji Petrol Bank towards Pondy direction,



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at that time the Lorry Driver driven the vehicle in a rash and negligent manner and dashed against the back side of another Lorry bearing Reg.No.TN 19 K 4755, which was going in front of the Lorry. In the said accident the deceased sustained fatal injuries and succumbed to the injuries.

4 The claim petition was contested by the appellant/Insurance company which filed a detailed counter denying all the allegations in the claim petition apart from disputing the negligence, quantum and liability.

5 Before the claims Tribunal, mother of the deceased was examined as P.W.1, an eye witness was examined as P.W.2 and Exs.P1 to P12 were marked in support of the claim. On the side of the appellant/Insurance Company, R.W.1 was examined and Ex.R1 was marked.

6 The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.14,21,000/- as compensation along with 7.5% interest. Questioning the liability and challenging the quantum of compensation, the Insurance Company has filed the present appeal before this Court.



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Learned counsel appearing for the appellant/Insurance Company would submit that at the time of accident, the deceased was travelling as an unauthorised passenger and the Insurance policy covers only the Driver, Cleaner and the owner of the goods and hence the policy does not cover the deceased, who is only unauthorised passenger. The second claimant/father of the deceased gave complaint before the Police and based on his complaint FIR was also registered, in which he stated that his son boarded the Lorry at Vandalur and he was working as JCB Driver in Chennai and he never stated that his son was traveling as Cleaner of the offending vehicle. The Driver of the Lorry is none other than uncle of the deceased. The father of the deceased did not come into witness box and he evaded cross examination. Therefore the Tribunal failed to consider the fact that the deceased was traveling as unauthorised passenger, who does not cover under the policy and hence the appellant is not liable to pay the compensation and hence the appellant/Insurance Company has to be exonerated from the liability.

8 Per contra, the learned counsel appearing for the respondents 1 to 4/claimants would submit that the mother of the deceased was examined as



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P.W.1, who clearly stated that her son was working as cleaner in the first respondent's lorry. Even in the claim petition itself the avocation of the deceased was mentioned. The appellant/Insurance Company did not examine owner of the vehicle to disprove the version of the claimants. Hence the deceased was travelling as Cleaner in the offending vehicle and the appellant, who is the insurer of the said vehicle is liable to indemnify the loss caused by the owner of the offending vehicle. The Tribunal rightly appreciated the facts and awarded the compensation and hence there is no merit in the appeal and the same is liable to be dismissed.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 According to the appellant/Insurance Company the policy covers only the Driver, Cleaner and owner of the goods and the deceased was neither traveling as cleaner nor as owner of the goods. Hence the appellant is not liable to pay the compensation.



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A careful reading of the materials shows that the the father of the deceased, the second respondent/2nd claimant given complaint before the Police and in the FIR it is stated that his son was travelling in the offending vehicle, but, it is not mentioned in the FIR that his son was traveling in the offending vehicle as Cleaner. Further the father of the deceased did not come into the witness box to offer his explanation about the allegations levelled in the complaint and cleverly evaded cross examination.

12 The mother of the deceased was examined as P.W.1 and she has clearly admitted that his son was working as JCB Driver and the Driver of the offending vehicle was close relative of the deceased. There is no independent witness examined by the claimants to prove that the deceased was working as cleaner of the offending vehicle. When there is specific allegation/averment in the FIR, which was registered based on the complaint given by the father of the deceased, he should have come into witness box and offered his explanation about the allegations made in the complaint. But he did not come into the witness box and he evaded the cross examination.



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13 In this case, to prove the fact that the deceased was working as cleaner of the offending vehicle, no independent witness was examined and only the mother of the deceased was examined as P.W.1. Even though P.W.2, who is said to be eye witness to the occurrence, during cross examination, he has clearly stated that the deceased is not known person and the deceased is unknown person to him. Therefore in the absence of examination of Driver of the offending vehicle or any other independent witness proving the employment of the deceased, the evidence of P.W.2 cannot be taken into account as the proof of employment of the deceased as cleaner in the offending vehicle.

14 Under these circumstances, this Court comes to the conclusion that at the time of accident, the deceased was not working as Cleaner of the offending vehicle. Hence the appellant/Insurance Company is not liable to pay the compensation awarded by the Tribunal and the appellant is exonerated from the liability. But, from the evidence of P.W.2, it is proved that the accident had occurred only due to the rash and negligent driving of the Driver of the offending vehicle and hence the owner of the offending vehicle is liable to pay the compensation awarded by the Tribunal.



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15 In fine, the order of the Tribunal is set aside insofar as fixing the

liability on the appellant/Insurance Company is concerned and the quantum of compensation awarded by the Tribunal is hereby confirmed. The owner of the offending vehicle is liable to pay the compensation awarded by the Tribunal. Accordingly the Civil Miscellaneous Appeal is allowed. Consequently connected miscellaneous petition is closed. No costs.

27.09.2023

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge, Tindivanam.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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