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C.M.A.Nos.2190, 2239 and 2360 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2190, 2239 and 2360 2018

and

C.M.P.No.17211, 17056 and 17988 of 2018

M/s.United India Insurance Co. Ltd.,
No.3, Giri Ram Building,
Sathy – Erode Main Road,
Gobichettipalayam Taluk.

... Appellant in all the appeals

Vs.

1. Saravanakumar
2. P.Venkidusamy

...Respondents in C.M.A.No.2190 of 2018

1. Marayal
2. Vijayakumari
3. Sumathi
4. P.Venkidusamy

...Respondents in C.M.A.No.2239 of 2018

1. Sangara Gounder
2. Komarayal
3. P.Venkidusamy

...Respondents in C.M.A.No.2360 of 2018

Prayer in C.M.A.No.2190, 2239 and 2360 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree dated 14.09.2017 made in M.C.O.P.No.520, 521 and 526 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Sathyamangalam.



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For Appellant
in all the appeals : Mr.D.Bhaskaran

In C.M.A.No.2190 of 2018

For Respondents : Mr.K.Sudhagar for
M/s.V.P.K.Gowtham for R2

In C.M.A.No.2239 of 2018

For Respondents : M/s.R.Vijayan for R1 to R3

Mr.K.Sudhagar for
M/s.V.P.K.Gowtham for R4

In C.M.A.No.2360 of 2018

For Respondents : Ms.Rebeca Vasanthini Percy
for Mr.D.R.Arun Kumar for R1 & R2

Mr.K.Sudhagar for
M/s.V.P.K.Gowtham for R3

COMMON JUDGEMENT

Since the issue involved in the present appeals are one and the same they are disposed of by way of this common judgement.

2. It is the case of the claimants that on 09.09.2012 at about 1:45 pm when the lorry was parked below a live running electrical wire, due to the excess carrying capacity of the lorry, when the claimant in M.C.O.P.No.520 of 2012 got down to check the wheels of the lorry, which came in contact with the



live wire and raised alarm and when Sakthivel the deceased and another person by name Ganesan who was also travelling in the lorry went to help the claimant in M.C.O.P.No.520 of 2012, the said Sakthivel and Ganesan got electrocuted resulting in their death and the claimant in M.C.O.P.No.520 of 2012 namely Saravana Kumar also sustained injuries. Therefore, claiming compensation for injuries the claimant in M.C.O.P.No.520 of 2012 filed the said petition and the legal heirs of the deceased Sakthivel and Ganesan filed M.C.O.P.Nos.521 and 526 of 2012 respectively, claiming compensation for the death of the deceased.

3. The learned counsel for the appellant submits that the compensation granted for the death of the deceased Ganesan and Sakthivel cannot be maintained as the policy in issue was Act Only Policy and said Ganesan and Sakthivel having travelled in the lorry as gratuitous passenger cannot be brought within the ambit of third party to claim compensation. The said facts was not properly appreciated by the Tribunal which has awarded compensation. Therefore, this has to be set aside.

4. It is the further submission of the learned counsel that the claimant in M.C.O.P.No.520 of 2012 has taken his friends namely Ganesan and



Sakthivel in lorry and they have not in any manner accompanied the lorry as cleaner or additional driver and therefore they will not be entitled to claim compensation under the provisions of Motor Vehicles Act. Further the claimant in M.C.O.P.No.520 of 2012 cannot also be brought within the purview of driver as he was not driving the said vehicle at the particular point of time. It is further submitted that the death of the deceased and the injuries suffered by the claimant in M.C.O.P.No.520 of 2012 had not occurred on account of any accident and therefore, the appellant is not entitled to compensate the claimants. Therefore, the appeals deserve to be dismissed. The Tribunal has not appreciated all the aforesaid facts and has erroneously allowed the claim petitions which requires interference at the hand of this Court.

5. Per contra the learned counsel appearing for the claimants submitted that though the deceased persons have travelled in the lorry, however, no accident had happened and only when the death of the deceased had happened in the course of the accident, the insurance company would be absolved to its liability. In the case on hand, the death having occurred when the lorry was stationary, the deceased would fall within the ambit of third parties, so as to claim compensation, the claim petitions have been filed. It is the further



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submission of the claimant in M.C.O.P.No.520 of 2012 that he was acting as a Driver in the vehicle which is not disputed and merely because he was not driving the vehicle at the negligent point of time cannot be the basis to deny the claim of the claimants and such fact has been rightly appreciated by the Tribunal by granting compensation which does not require interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed on record.

7. The factum of the happening is not in dispute. The deceased persons have died when the lorry which was carrying the load was stationary and the deceased have met the death when they have tried to save the claimant in M.C.O.P.No.520 of 2012 from being electrocuted. However, as fate would have it, the claimant in M.C.O.P.No.520 of 2012 was saved from electrocution but the persons who went to save the said claimant passed away. The whole claim has been filed on the premises that the deceased are to be considered as third parties and they would be entitled for compensation. The fact is that the lorry is covered under the Act Only Policy and which covers third party



insurance and also it covers injuries with regard to the driver of the vehicle. That it is as could be ascertained from the F.I.R. and also the deposition of the witnesses and a perusal of the documents, the lorry was carrying load beyond its capacity which is clearly in violation of the policy conditions.

8. In such a scenario, when the lorry was stationed below a live wire at that point, the wire had come in contact with the claimant in M.C.O.P.No.520 of 2012 and when he raised alarm the two deceased persons went to save him, but as fate would have it they died. The reason for the said electrocution would only be on account of the heavy loading of the lorry but for which the accident would have not happened.

9. However, it is claimed by the learned counsel appearing for the claimants that two persons who met their death should have to be brought within the ambit of third parties as the said death was not on account of accident, but was at the time when the lorry was stationary. However, it is to be pointed out that the insurance company is liable to cover the death only in respect of an accident and not otherwise. So the two persons who were alleged to have helped the claimant in M.C.O.P.No.520 of 2012 having met their death,



they cannot be said to be third parties as defined under the Motor Vehicles Act.

In this regard, a perusal of the deposition of the claimant in M.C.O.P.No.520 of 2012 and also the statement made in the F.I.R. which has been marked as Ex.P.1 clearly reveals that the deceased were carried in the lorry and merely because the incident had happened when the lorry was stationary, the said individuals cannot be brought within the ambit of third parties to claim compensation.

10. The question of claim of compensation with regard to third parties would arise only when the accident had happened and not otherwise. Therefore, there arises no liability for the insurance company to pay compensation in terms of the policy condition when there is clear violation on behalf of the owner of the vehicle. However, considering the fact that the Motor Vehicles Act is a benevolent legislation and the deceased have met their death when they were trying to save the claimant in M.C.O.P.No.520 of 2012 from electrocution, extending the benevolence, the Tribunal has thought it fit to direct the insurer to pay the compensation to the injured claimant as well as the legal heirs of the deceased persons and further permitting the insurance company to recover the same from the owner of the vehicle thereafter is perfectly in order. Therefore, on



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the basis of the reasons aforesaid this Court is not inclined to interfere with the order passed by the Motor Accidents Claims Tribunal (Sub Court), Sathyamangalam in M.C.O.P.No.520, 521 and 526 of 2012 vide order dated 14.09.2017.

11. With the above observation, these appeals are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.11.2023

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Speaking Order/ Non Speaking Order: Yes/No
Index : Yes/No
NCC : Yes/No



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To

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1. Motor Accidents Claims Tribunal (Sub Court), Sathyamangalam.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J

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