



C.M.A. No. 2353 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2353 of 2021 and

C.M.P. No. 13227 of 2021

The United India Insurance
Company Limited,
Branch Office,
No.5-B/11, SBI Upstairs,
Salem Road, Rasipuram.

... Appellant / 3rd Respondent

Vs.

1. Vadivel

... 1st Respondent/ Petitioner

2. The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
(Salem Division - I), Limited,
No.12, Ramakrishna Road, Salem.

3. Periyannan

... Respondents 2&3 / Respondents 1&2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 17.12.2019 passed in M.C.O.P. No. 398 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

For Appellants : M/s. M.B. Gopalan Associates



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For R1 : Mr. C. Paraneedharan
For R2 : NA
For R3 : NA

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree passed in M.C.O.P. No. 398 of 2012, dated 17.12.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 02.04.2012, at about 06:30PM, the claimant was travelling in the trailer of a tractor bearing Registration No.TN-28-D-3198 on Rasipuram to Namakkal Main road, while he reached near Maskkalipatty bus stop, a TNSTC bus bearing Registration No.TN-30-N-0857 came from Salem driven by its driver in a rash and negligent manner, hit on the back side of the tractor, thereby the claimant fell down from the tractor and sustained grievous injuries to the claimant. A criminal case was registered against the driver of the bus in Cr.No.270/2012 u/s. 279, 337 of IPC on the



file of Rasipuram Police Station. For the injuries sustained, the claimant has filed this claim petition seeking compensation for a sum of Rs.5,00,000/- along with interest and cost under section 166 of the Motor Vehicles Act.

4. The third respondent - insurance company filed a counter and disputed the age, occupation, income and disability sustained due to the accident by the claimant and further contended there is a violation of policy condition since the driver of the tractor has not possessed a valid driving licence at the time of accident. The insurance company also contended that the accident was taken place only due to the rash and negligent driving by the TNSTC bus driver and the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.8 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point no.1 has held that the rash and negligence on the part of both TNSTC bus



driver and Tractor driver are responsible for the accident. In point no. 2, the Tribunal has fixed the liability in the ratio of 50:50 on both Transport Corporation and second and third respondents. In point no.3, the Tribunal has awarded compensation for a sum of Rs.30,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on the them to pay the compensation to the claimant.

8. The learned counsel appearing for the insurance company submitted that the claimant was travelled in the trailer of the tractor belong to the second respondent as a gratuitous passenger. The driver of the tractor was also not having a valid driving licence at the time of occurrence, hence there is a violation of policy condition. The learned counsel also relied on the Judgment of this Court in ***C.M.A.No.2649 of 2017, the United India Insurance Company Limited vs. Saraswathi and two others***, wherein, this Court has considered the issue, whether the persons who travelled in the



Trailer as loadmen are entitled to claim compensation or not. This Court, after considering the Judgments of the Hon'ble Apex Court in *New India Assurance Co., Ltd., vs. Asha Rani and Ors.*, [2001 (6) SCC 724]; *National Insurance Co., Ltd., vs. Baljit Kaur* [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) has to set aside the award of the Tribunal, directing the Insurance Company to pay compensation to the gratuitous passengers who travelled in the Tractor/Trailer.

9. The contention of the claimant is that, he has travelled in the Trailer along with the Tar tins and since the Trailer is also insured with the Insurance Company herein, the Tribunal has rightly awarded compensation, hence, prays to confirm the award.

10. Heard the submissions made on both sides and perused the materials available on record:

11. In the case in hand, it is an admitted case of the claimant that he



travelled in the Trailer of the tractor belongs to the second respondent and insured with the third respondent. He claim compensation, as he sustained injuries while travelling in the said tractor on the ground that he is a third party. Recently, the Full Bench of 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. 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



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“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 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.”

12. This Court in **C.M.A.No.2649 of 2017, the United India Insurance Company Limited vs. Saraswathi and two others**, has considered the case of the claim made for the death of person travelled in the Trailer, and after considering the Judgments of the Hon'ble Apex Court in **New India Assurance Co. Ltd., v. Asha Rani and Ors.**, reported in **2001 (6) SCC 724**; **National Insurance Co. Ltd., v. Baljit Kaur** reported in **2004 (2) SCC 1** and **Bharti Axa General Insurance Co. vs Smt. Poonam And Anr.**, this Court has held in Paragraph No.26, as follows:

“26. The issue is thus settled in case of compensation to be paid for sufferings of gratuitous passenger and it would be extremely inappropriate, if this issue were to again meander around and be held otherwise than as laid down. The law laid down is that the Tribunal was not right in directing the insurance company to pay the compensation and then recover the same from the owner of the offending vehicle.”

13. The Judgment of the Full Bench of Karnataka High Court cited



above, is squarely apply this Court, since the claimant has travelled in the goods vehicle by sitting in the Trailer which is not having any permissible seating capacity enabling the loadmen or gratuitous passengers to travel in the Trailer, hence, he is not entitled to travel in the Trailer. As per the policy condition, transporting any person in the Trailer is not permissible. Hence, the claimant shall be termed only as a gratuitous passenger and the Insurance Company is not liable to indemnify the owner of the vehicle as held by the Hon'ble Apex Court in *Asha Rani and Baljit Kaur* cases cited above.

14. Accordingly, the appeal filed by the Insurance Company is allowed. The Award and Decree passed by the Tribunal in M.C.O.P. No.398 of 2012 is hereby modified that the Insurance Company is not liable to indemnify the owner of the tractor, second respondent in the claim petition, to pay any compensation to the claimant. In other aspects the award of the Tribunal shall stand confirmed. The Insurance Company is permitted to withdraw the compensation amount if any, already deposited. There shall be no order as to costs. Consequently, connected miscellaneous petitions stands closed.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

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

K. RAJASEKAR, J.

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