



C.M.A. No. 2094 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2094 of 2021
and C.M.P. No.11444 of 2021

HDFC ERGO General Insurance Co. Ltd.,
Thanjavur and District. ... Appellant / 2nd Respondent

Vs.

1. Balu ... Respondent / Petitioner
2. A. Dhaineesraj ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 22.01.2019 made in M.C.O.P. No. 338 of 2013 on the file of the Sub Judge, Motor Accident Claims Tribunal, Kallakurichi.

For Appellant	:	Mr. K. Vinod
For R1	:	Mr. T. Dhanasekaran
For R2	:	No Appearance



WEB COPY



C.M.A. No. 2094 of 2021

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company against the Judgment and decree made in M.C.O.P. No. 338 of 2013, dated 22.01.2019 on the file of the Sub Judge, Motor Accident Claims Tribunal, Kallakurichi, wherein the Tribunal has awarded compensation for a sum of Rs.5,52,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

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

3. On 22.03.2013 at about 16:30 hours the claimant was engaged to cut the sugar cane in the field belongs to the first respondent namely Dhaineesraj. The first respondent also engaged his tractor bearing Registration No.TN-49-AP-5307 for tilling the field for the purpose of new cropping. The driver of the said tractor while tilling the land has requested the claimant herein to sit on the tractor's rotavator for the purpose of adding weight for tilling the land completely. Accordingly, the claimant has also



seated on the top of the rotavator and during the tilling process, the driver of the tractor drove the tractor in a negligent manner, which caused the claimant to fall down from the rotavator and to sustain injuries on his two legs. The claimant was immediately taken to the Thanjavur Government Medical College Hospital for treatment. A criminal case was also registered in Cr.No.112/2013 U/s. 337 of IPC on the file of S.H.O. Vallam. For the injuries sustained, the claimant filed a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 (1) of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the tractor bearing Registration No.TN-49-AP-5307 has not contested the claim and remained ex-parte. The second respondent - insurance company of the said tractor has filed a counter and contended that the claimant has sat over the rotavator and travelled in the tractor, hence there is a violation of policy condition, hence the insurance company is not liable to indemnify the first respondent and to pay compensation to the claimant and the first respondent alone is liable to pay any compensation awarded.



5. Before the Tribunal, the claimant himself examined as P.W.1 and Exs.P.1 to P.4 and Ex.C.1 - disability certificate issued by the Villupuram Government Medical College Hospital were marked. On the side of the respondents, P.W.1 and P.W.2 were examined and Exs.R.1 was marked. In addition the evidence of witness, Exs.W.1 to W.4 were also marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the rash and negligence driving of the driver of the first respondent's tractor bearing Registration No.TN-49-AP-5307. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.5,52,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.3, the Tribunal has fixed the liability on the part of the insurance company to indemnify the first respondent and to pay the compensation to the claimant.

8. Aggrieved over the award of the Tribunal, the insurance company has filed this appeal challenging the liability fixed on them to



C.M.A. No. 2094 of 2021

indemnify the owner of the tractor bearing Registration No.TN-49-AP-5307 and to pay the compensation to the claimant.

9. Mr. K. Vinod, learned counsel appearing for the insurance company has submitted that the Tribunal has accepted the fact that the claimant herein has travelled as an unauthorized passenger that too on the top of the rotavator negligently, which resulted in accident and the Tribunal has also accepted that only one person could sit on the tractor i.e., its operator and further submitted that the insurance premium of the said tractor covers the cleaner of the vehicle. But, the Tribunal has wrongly held that the claimant herein shall be treated as an assistant/ cleaner and he comes under coverage of the policy and directed the insurance company to indemnify the first respondent herein, hence prays to absolve the insurance company from indemnifying the owner of the tractor.

10. 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 or Tractor as an assistant



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 held that the Insurance Company is not liable to indemnify the owner of the vehicle, for payment of compensation to the gratuitous passenger who travelled on the tractor.

11. The learned counsel appearing for the claimant has submitted that the Tribunal based on the evidence placed on record has rightly appreciated the case of the claimant and awarded a just compensation, hence prays to confirm the award of the Tribunal.

12. I have considered the submissions made on both sides and perused the materials available on record.

13. It is an admitted case of the claimant that he was engaged by



the first respondent for cutting the sugar cane on his field and while doing so, the driver of the tractor has requested the claimant to sit on the rotavator for effective tilling of the land and the same was also reiterated during his evidence, but the Tribunal has treated the claimant as a cleaner of the Tractor and awarded compensation, however, even the cleaner is also not permitted to sit on the rotavator, which is a machine part of the tractor and this was not properly appreciated by the Tribunal.

14. 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.

13. 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,



WEB COPY

(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

“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



WEB COPY

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.”

14. In this case, the Tribunal has recorded a finding, based on the evidence of P.W.1 that the Tractor was driven by one Robert @ Arokiaraj and he has requested the claimant to assist during the tilling the land, which belongs to the first respondent and while assisting, due to rash and negligence driving by the driver of the tractor, the claimant has fell down and sustained injuries. A criminal case was also registered against the driver for his rash and negligence driving and the F.I.R. copy was also marked as Ex.P.1. Based on this evidence, the Tribunal has held that the accident was taken place only during agricultural work and treated the claimant as an assistant to the driver of the said tractor. 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.”

15. The Judgment of the Full Bench of Karnataka High Court cited above, applicable to this case, since the claimant has travelled by sitting on the rotavator attached to the tractor for the purpose of tilling the land, which is not having any permissible seating capacity. As per the policy condition, the travel of any person on the machine parts of the tractor is not permissible. In this case, the claimant himself admitted that on the request of the driver of the tractor for effectively tilling the land, the claimant has sat over the rotavator and subsequently, suffered injuries and it is also the fact that the claimant was only engaged for cutting the sugar cane in the first respondent's field. Hence, this Court is of the view that the claimant shall



C.M.A. No. 2094 of 2021

be termed only as a gratuitous passengers 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.

16. Accordingly, the appeal filed by the Insurance Company is allowed. The Award and Decree passed by the Tribunal in M.C.O.P. No.338 of 2013 is hereby modified that compensation quantified by the Tribunal shall be paid by the second respondent, who is the owner of the Tractor. The Insurance Company is not liable to indemnify the second respondent and 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 in the above M.C.O.P. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

20.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



WEB COPY



C.M.A. No. 2094 of 2021

K. RAJASEKAR, J.

stn

To:

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

C.M.A. No. 2094 of 2021

20.12.2023