



C.M.A.No.3395 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3395 of 2014

M/s. The New India Assurance Co. Ltd.,  
11, 19, 20, Govt. Arts College Road,  
Coimbatore District.

...Appellant

Vs.

1. M.Mallika
2. Minor Balashanmugam
3. Minor Prasanth  
Minors rep. by their next friend mother M.Mallika
4. P.Ananthayee
5. V.Gurusamy

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the Judgment and decree made in M.A.C.T.O.P.No.351 of 2009 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge, Special District Judge of MCOP cases) at Salem dated 20.06.2014.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.V.Kumaravelan, for R1 to R4



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: No Appearance, for R5

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### **JUDGEMENT**

Challenging the Judgment and decree dated 20.06.2014 made in M.A.C.T.O.P.No.351 of 2009 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge, Special District Judge of MCOP cases) at Salem, the present appeal has been filed.

2. The case of the appellant is that, the respondents 1 to 4 filed a claim petition claiming a compensation of Rs.10,00,000/- on the ground that, on 04.05.2007, at about 5.00 pm., when the deceased Murugan was travelling in the tractor bearing Regn.No.TN-37-AB-4748, owned by the 5<sup>th</sup> respondent, insured with the appellant/insurance company, as the driver of the said tractor drove the vehicle in a rash and negligent manner, the deceased was thrown out of the tractor, as a result of which, he sustained fatal injuries all over his body and was taken to hospital, however, he subsequently passed away. Thereby, the respondents 1 to 4/dependents of the deceased filed a claim petition seeking compensation for the death of the deceased Murugan. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.7,26,000/-. Aggrieved



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by the said order, the present appeal has been preferred by the appellant, questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that, the deceased was travelling in the trailer which attached to the tractor, which alone was insured with the appellant/insurance company and the trailer not having been insured, no liability could be fastened on the appellant/insurance company to indemnify the insured/5<sup>th</sup> respondent. Even otherwise, the tractor was insured under the Act Only Policy, which does not cover the liability in respect of persons travelling in the tractor and the deceased having travelled in the trailer, the order passed by the tribunal directing the appellant/insurer to pay compensation for the death of the deceased is wholly unsustainable. Further, the evidence of RW1 coupled with Ex.R1 to R4 have not been properly appreciated by the tribunal and therefore, the order passed by the tribunal requires to be interfered with. He further submitted that, the issue involved in this appeal is no longer *res integra* and the same has already been settled by the Apex Court in the case of ***Dhondubai Vs. Hanmantappa Bandappa Gndigude & Ors.*** reported in **2023 (2) TN MAC 300 (SC)**. Accordingly, he prayed for appropriate orders.

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4. Per contra, the learned counsel appearing for the respondents 1 to 4/claimants submitted that, the trailer is the part of the tractor and the tractor having admitted to have been insured with the appellant/insurance company, the appellant is liable to pay the compensation. Even otherwise, placing reliance upon the decision of the Apex Court in the case of ***Dhondubai*** (*stated supra*), relied upon by the learned counsel for the appellant himself, the learned counsel for the claimants submitted that, even if it is held that the trailer was not part of the tractor which has been insured, the Tribunal could very well order payment of compensation by the appellant/insurance company and the same to be recovered from the 5<sup>th</sup> respondent/owner of the vehicle. Therefore, no interference is warranted in the impugned award passed by the tribunal. Accordingly, he prayed for dismissal of this appeal.

5. Though notice was served on the 5<sup>th</sup> respondent and his name was printed in the cause list, none appeared on his behalf. However, considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the materials available on record.



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6. Heard learned counsel for the appellant and the learned counsel appearing for the respondents 1 to 4 and perused the material documents placed on record.

7. The factum and manner of the accident is not in dispute. The only issue arises for consideration in the present appeal is with regard to whether the trailer which has been attached to the tractor is insured with the appellant or not?

8. A perusal of the documents clearly shows that the policy is an Act only Policy covering the third party risk and it does not pertain to coverage of risk with regard to the persons travelling in the tractor except the driver. In the case on hand, the deceased had travelled in the trailer and so he is not a driver for the purpose of seeking compensation under the Act only Policy. Even otherwise, the Policy document reveals that the tractor alone is insured with the appellant and any attachment to the tractor namely in the form of Trailer has not been insured by the appellant.

9. A perusal of the Ex.P1, FIR copy reveals that the deceased had



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travelled in the trailer and not in the tractor. Therefore, the trailer having not been insured by the appellant, the appellant is not liable to pay any compensation. Even if it is to be presumed without admitting that the deceased was travelling in the tractor, the claimants would not be entitled to any compensation, as the driver of the tractor alone is covered under the policy and no other persons in the form of gratuitous passenger has been covered under the said Policy.

10. Therefore, viewing the matter from any angle, the appellant cannot be made liable to pay any compensation to the respondents 1 to 4/claimants and it would be only the 5<sup>th</sup> respondent/owner of the tractor, who would be liable to compensate the claimants as per the award passed by the tribunal.

11. The relevant portion of the decision of the Apex Court in the case of ***Dhondubai*** (*stated supra*), relied upon by the learned counsel for the appellant is extracted hereunder:-

“3. The appellant/claimant is before this Court seeking payment



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of the compensation in respect of the injuries suffered in the accident. The Motor Accidents Claim Tribunal (For short 'MACT') at the first instance, through its judgment dated 27.02.2015 had awarded the sum of Rs. 1,78,500/- with interest at 6% per annum. The High Court has enhanced the compensation to Rs.9,99,280/- with interest @ 9% per annum through its judgment dated 21.09.2018.

4. However, the High Court on taking note that the claimant was travelling in the trailer attached to the tractor, which was not insured though tractor was insured, has exonerated the Insurance Company. It is in that light, the appellant is before this Court.

5. In a matter of the present nature, the law is well settled that when a tractor and trailer are involved, both the tractor as well as the trailer are required to be insured. Therefore, in a normal circumstance, when the appellant/claimant was travelling in the trailer which was not insured, the liability on the Insurance Company cannot be fastened and to that extent the High Court was justified.

6. However, the question for consideration herein is as to whether in the peculiar facts and circumstances arising in this case, this Court is required to exercise the power under Article 142 of the Constitution of India to direct the Insurance Company to pay the amount and recover the same from the owner of the vehicle. In that regard, the position is no more res-integra in view of the consideration made by this Court in the case of Oriental Insurance Company Ltd. Vs. Brij Mohan & Ors. reported in (2007) 7 SCC 56. This Court in a similar circumstance where the trailer did not have insurance, has exercised the power under



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Article 142 taking into consideration the difficult circumstances in which the claimant therein was placed. ”

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12. In the above said decision, the Apex Court had clearly held that when a person was travelling in the trailer which was not insured, the liability cannot be fastened on the insurer of the vehicle and further, though the Apex Court, by invoking its extraordinary jurisdiction under Article 142 Constitution of India, had granted a relief of pay and recovery, however, it is to be pointed out that the power available to the Apex Court under Article 142 is not available to this Court under any provision of the Constitution of India. For the purpose of rendering substantial justice, the Apex Court has invoked its extraordinary jurisdiction under Article 142 and granted relief. The Constitution of India having not granted any such power to this Court, the said decision cannot be treated as a binding precedent for this Court to grant the relief of pay and recovery and therefore, the said decision will not stand attracted to the case on hand. Therefore, the liability fixed on the appellant/insurance company to pay the compensation is wholly erroneous and same has to necessarily be set aside.



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13. For the reasons aforesaid, this Appeal stands allowed and the impugned award dated 20.06.2014 made in M.A.C.T.O.P.No.351 of 2009 is set aside. The appellant/insurance company is permitted to seek withdrawal of the award amount, if any already deposited by them by filing necessary application before the Tribunal. The respondents 1 to 4/claimants are at liberty to workout their remedy in the manner known to law as against the 5<sup>th</sup> respondent/owner of the vehicle. No costs.

**10.10.2023**

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Index : Yes/No  
Speaking order : Yes/No  
NCC : Yes/No

To:

1. The Motor Accidents Claims Tribunal  
(II Additional District Judge, Special District Judge of MCOP cases),  
Salem.
2. The Section Officer, V.R. Section, High Court, Madras.

**M.DHANDAPANI, J.**

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