



C.M.A.No.2269 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2269 of 2018

1. Nagamma
2. Lalitha
3. Murugan
4. Satish

... Appellants

Vs.

1. T.Rajapandian
2. United India Insurance Co.Ltd,
Motor Third Party Claims, 4th Floor,
Silingi Building, No.134, Greams Road,
Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the decree and judgment dated 14.11.2017 made in M.C.O.P.No.2526 of 2013 on the file of the Motor Accidents Claims Tribunal (Chief Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R1 : Notice served
No appearance

For R2 : M/s.Vijaya Kamala



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed against the Award dated 14.11.2017 passed in M.C.O.P.No.2526 of 2013 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Chennai.

2. Appellants who are the claimants and who are legal representatives of the deceased, have filed M.C.O.P.No.2526 of 2013 claiming compensation for the death of the deceased before the Tribunal. First respondent is the owner of the offending vehicle, who insured the said vehicle before the second respondent/ Insurance Company.

3. Case of the claimants before the Tribunal is that on 19.07.2010, at about 16.25 hours, when the deceased was travelling as a load man in a Tractor cum Trailer bearing Registration No.TN-20-Aw-17667 and TN-20-AW-1656 and the driver of the said Tractor drove the vehicle in a rash and negligent manner, due to which, the vehicle was capsized on the road side ditch and thereby, the deceased sustained fatal injuries. Hence the claim petition.



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4. Learned counsel for the appellants/claimants submitted that the deceased travelled in the Tractor cum Trailer as a coolie. He further submitted that, from the evidence of P.W.2, who is the eye witness and also the co-worker and co-traveller who has clearly stated that he along with the deceased, travelled in the tractor as a Coolie at the time of the accident. The Tribunal failed to consider the evidence of P.W.2 that the deceased was travelling as a load man cum Coolie in the offending vehicle. The first respondent/owner of the vehicle has obtained package policy to his Tractor- trailer covering the risk of driver and also the Coolie. He further submitted that FC has been taken for using the Tractor for commercial purpose and when the Tractor is attached with the Trailer, the said vehicle is used for agricultural purpose also. The Tribunal ought to have fixed the entire liability on the second respondent/Insurance Company and directed to pay the compensation to the claimants/appellants. Further, the Tribunal failed to consider various decisions of the Apex Court and this Court and exonerated the second respondent/Insurance Company, which warrants interference by this Court. The Tribunal wrongly held that the deceased was travelling in the



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Tractor as an gratuitous passenger and exonerated the second respondent/Insurance Company from its liability.

5. He further submitted that in various decisions of the Apex Court and also this Court, even for the coolie or the employer, who travelled in the mud-guard of the Tractor, are also covered under the Insurance Policy and they are also entitled to get compensation. This fact was not considered by the Tribunal and prays to allow the appeal. In support of his contentions, placed reliance on the following judgments:

i.C.A.No.2247 of 2018 (S.L.P.(C) No.5485 of 2017 dated 28.03.2018 [Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited] reported in 2018 (1) TN MAC 435 (SC).

ii. C.M.A.No.559 of 2015 dated 22.11.2017 [Divisional Manager, United India Insurance Company Limited Vs. Kalaivani and others] reported in 2019 ACJ 306.

iii. C.A.No.6476 of 1998 dated 18.04.2005 [National Insurance Company Limited Vs. Pembai Patel and others] reported in 2005 ACJ 1323.



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iv. *M.F.A.No.32023 of 2010 (WC) dated 04.01.2016 [United India Insurance Company Limited Vs. Rudramma and others]* reported in 2016 (2) TN MAC 770 (Kar.)

v. *M.F.A.No.211 of 2010 dated 02.12.2011 [National Insurance Company Limited Vs. Mohammed Ali and others]* reported in 2013 ACJ 1430.

vi. *C.M.A.No.3155 of 2005 dated 06.06.2019 [Branch Manager, National Insurance Company Limited, Vs. Erappa and others]* reported in 2019 (2) Tamil Nadu Motor Accident Cases/August-11].

vii. *Decision of the Hon'ble Division Bench of this Court rendered in C.M.A.No.3135 of 2015 dated 01.07.2015 [Anbalagan Vs. K.M.Asalm Basha]*

viii. *Decision of the Hon'ble Division Bench of this Court rendered in C.M.A.No.2183 of 2017 dated 12.09.2018 [Royal Sundaram Aliance Insurance Company Limited Vs. Shabiullah and others]*

ix. *Decision of this Court rendered in C.M.A.No.1929 of 2004 dated 17.12.2013 [New India Assurance Company Limited, Vellore, Vs. Raman and others]* reported in 2014 AAC 1704.



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6. Learned counsel for the second respondent/Insurance Company submitted that the offending vehicle is permitted to be used only for agricultural purpose. Even as per the conditions of the policy, the Tractor could be used only for agricultural purpose. The policy does not cover if the Tractor is used for other than agricultural purpose. There is no seating capacity to accommodate the passenger in the Tractor. The seating capacity of the Tractor is only one and other persons, except the driver cannot be permitted to travel in the Tractor. Any other person who travelled in the Tractor can be treated only as gratuitous passenger. As per the decisions of the Hon'ble Supreme Court as well this Court, it is clearly held that gratuitous persons are not entitled to get compensation from the Insurance Company. It is proved that at the time of accident, the Tractor was used for loading bricks and not for agricultural purpose. As per decision of the Hon'ble Supreme Court, gratuitous persons are not entitled to get compensation from the insurer and the insurer is not entitled to indemnify the loss caused by the owner of the vehicle. The Tribunal has rightly appreciated the oral and documentary evidence and exonerated the second respondent/Insurance



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Company from the claim and rightly fixed the liability on the first respondent, who is the owner of the vehicle.

7. Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company.

8. Admittedly, at the time of accident, the deceased was travelling in the tractor ie., on the mud-guard of the Tractor. Evidence of P.W.2 who is the eye witness, clearly shows that at the time of accident, the tractor was used for loading bricks. Further, P.W.2 admitted that he himself and also the deceased were loading the bricks and they were sitting on the mud guard on either side of the driver. From the evidence, it is clear that they were not working as coolie for agricultural purpose. Further, P.W.1 admitted that they were working in the bricks kiln. In this case, the Tractor is registered for the purpose of carrying agricultural activities. Both the copy of Insurance policy and F.C clearly shows that the Tractor is meant only for agricultural purpose and not for commercial



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purpose. From the available materials, it is clear that at the time of accident, the Tractor was used for commercial purpose for carrying bricks and the deceased was working as coolie for loading bricks. Learned counsel for the second respondent/Insurance Company has rightly pointed out that the Tractor was registered only for agricultural activities and not for any other commercial activities. The Insurance policy of the offending vehicle does not cover the passengers who travelled on the mudguard and they can only be termed as gratuitous passengers and the policy covers only for the driver of the Tractor. Therefore, various decisions referred by the learned counsel for the appellant are not applicable to the present case on hand. The Tractor was permitted only for Agricultural purposes but, it had been engaged to transport bricks, which is admittedly not an agricultural activity. It is very clear that the Tractor was not used for agricultural activities. The Tribunal has rightly appreciated the oral and documentary evidence. Since the appellate court is the final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give independent finding. On a reading of the entire materials, as already stated, P.W.2 who is the



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eye witness, co-traveller and co-employee of the deceased, has admitted that, at the time incident, the Tractor was used only for carrying bricks. Further, he admitted that, the deceased and himself were working as Coolie in the brick klin and not doing any other agricultural activities.

9. Therefore, under these facts and circumstances, this Court finds that since the victim having travelled on a mud guard of the Tractor which is used for commercial purpose other than agricultural activities and they travelled as, as gratuitous passenger only which is contrary to the policy condition. The first respondent/owner of the vehicle is liable to pay the compensation to the claimants. The trial court rightly appreciated the oral and documentary evidence and directed the owner of the tractor to pay the compensation to the claimants, by exonerating the second respondent/Insurance company. This Court does not find any perversity in appreciation of evidence and also there is no ground to interfere with the findings of the Tribunal.



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10. Hence there is no merit in the appeal and the same is liable to be dismissed. Accordingly, Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs.

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To

1. Motor Accidents Claims Tribunal (Chief Small Causes Court),
Chennai.
2. The Section Officer,
VR Section,
High Court, Chennai.



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P.VELMURUGAN, J.

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