IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4136 of 2019
And
C.M.P.No.23376 of 2019

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Post Box No.19, 1st Floor,
No.3-L, Sidhaveerappa Chetty Street,
Dharmapuri – 635 701. ... Appellant

Vs.

1.A.Gandhi
2.K.Subramani ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 31.08.2015 made in M.C.O.P.No.537 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.S.P.Yuvaraj for R1
R2 – No Appearance

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 31.08.2015 passed by the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri, in M.C.O.P.No.537 of 2011.

2.The brief facts of the case is that on 04.02.2009, at about 8.00p.m., the first respondent was travelling and sitting nearby driver seat in the Tractor bearing Registration No.TN 22 W 7047 owned by the second respondent and the vehicle was proceeding from Baliganoor to Ennekolpudjur and when the vehicle came near High School where the road was not in a good condition, due to the rash and negligent driving of the driver of the vehicle, the first respondent was tossed up and fell down on the floor and the wheel of the trailor drove over the stomach of the first respondent, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.7 Lakhs. After adjudication, the Motor Accidents

Claims Tribunal awarded a sum of Rs.3,93,728/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation and proportionate costs and directed the appellant Insurance Company to deposit the compensation and to recover the same from the second respondent. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the policy is an Act policy and the seating capacity of the tractor is only one person i.e., driver, however, the first respondent travelled as un-authorized passenger and hence, the Tribunal ought not to have directed pay and recover. The learned counsel further submitted that similar issue was considered by the Hon'ble Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Lakshmamma and two others [C.M.A.No.496 of 2021 dated 03.08.2023]*** and allowed the civil miscellaneous appeal and prayed that this Court may allow this civil miscellaneous appeal on the same lines.

5.Per contra, the learned counsel appearing for the first respondent/ claimant submitted that the first respondent is an employee of the second respondent and with his permission, he completed his agricultural work and travelled as a coolie in the Tractor owned by the second respondent, however, since the road was not in the good condition, he was thrown away. An an employee, the first respondent is entitled to claim compensation and hence the impugned judgment warrants no interference.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

7.Admittedly, on 04.02.2009, at about 8.00 p.m., the first respondent was travelling and sitting nearby driver seat in the Tractor owned by the second respondent and the vehicle was proceeding from Baliganoor to Ennekolpudjur and when the vehicle came near High School where the road was not in a good condition, due to the rash and negligent driving of the driver of the vehicle, the first respondent was tossed up and fell down on the floor and the wheel of the trailor drove over the stomach of the first respondent, due to which, the first respondent sustained injuries.

8.The accident and the manner in which the accident happened are not disputed. The only dispute is that the policy is only Act policy and the seating capacity of the tractor is only one person i.e., driver, however, the first respondent travelled as un-authorized passenger and hence, the Tribunal ought not to have directed pay and recover.

9.Similar issue was considered by the Hon'ble Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Lakshmamma and two others [C.M.A.No.496 of 2021 dated 03.08.2023]*** and it is appropriate to extract the relevant portion of the decision hereunder:

> *"16.We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle. Rule 28 of the Central Motor Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mudguard of the Tractor. When there is a statutory violation that persons, who*

travels in the mud-guard is unauthorized passenger, we cannot burden the Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailor shows that it is an agriculture vehicle. The facts revealed that it was used for non-agricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability.

17.The irresistable conclusion in the light of the above discussion

is that the Tribunal erred in directing the Insurance Company to pay a compensation with liberty to recover the same from the Insurer. This Civil Miscellaneous Appeal is therefore, allowed with a direction that the decision of the Tribunal to pay and recover alone will stand deleted. Since the owner has not questioned the owner of quantum of compensation, we do not interfere with the same. No costs. Consequently, connected miscellaneous petition is closed."

10.Applying the ratio laid down by the Hon'ble Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Lakshmamma and two others [C.M.A.No.496 of 2021 dated 03.08.2023]***, this civil miscellaneous appeal is allowed with a direction that the decision of the Tribunal to pay and recover alone will stand deleted. The judgment and decree dated 31.08.2015 passed by the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri, in M.C.O.P.No.537 of 2011, is modified to the above extent.

11.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2023

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

To

1.The Motor Accidents Claims Tribunal,
Additional Special Judge, Krishnagiri.

M.DHANDAPANI,J.
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