IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.Nos.3030, 3031 and 3062 of 2018
and
C.M.P.Nos.22995 and 22988 of 2018

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.106, Big Street,
Vasavai Building, 1st Floor,
Tiruvannamalai. .. Appellant in all the appeals

Vs.

1. Madhu
2. Manjunathan
3. Gunasekaran .. Respondents in C.M.A.No.3030 of 2018

1. Selvi
2. Manjunathan
3. Gunasekaran .. Respondents in C.M.A.No.3031 of 2018

1. Poongodi
2. Manjunathan
3. Gunasekaran .. Respondents in C.M.A.No.3062 of 2018

Civil Miscellaneous Appeal No.3030 of 2018 filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 25.03.2014 in M.C.O.P.No.697 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court), Tiruppatur.

Civil Miscellaneous Appeal No.3031 of 2018 filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 25.03.2014 in M.C.O.P.No.1276 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court), Tiruppatur.

Civil Miscellaneous Appeal No.3062 of 2018 filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 25.03.2014 in M.C.O.P.No.592 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court), Tiruppatur.

For appellants in all the appeals : Mr.M.Krishnamoorthy
For respondents in all the appeals: Mr.K.Myilsamy for R-1
R-2 set ex-parte before the Tribunal
Mr.P.A.Sudesh Kumar for R-3

COMMON JUDGMENT

These three appeals are filed by the Insurance Company challenging the respective Awards passed by the Motor Accidents Claims Tribunal, in regard to the liability fixed on them arising out of the same accident.

2. The second respondent herein is the driver of the Tractor/Trailer insured with the appellant/Insurance Company, and the appellant/Insurance Company was directed to pay the compensation. Challenging the same, the Insurance Company has filed these appeals.

3. Learned counsel for the appellant/Insurance Company submitted that the claimants were travelling in the Tractor bearing Registration No.TN-23-P-6081, attached with the Trailer bearing Registration No.TN-23-Y-9453. On 08.07.2009 at about 10.30 a.m., the accident had occurred only due to rash and negligent driving by the driver of the Tractor. The Tractor and Trailer capsized on the road side and therefore, the respondents/claimants sustained injuries. They were admitted in the hospital. Though the case was registered against the driver of the Tractor, learned counsel for the appellant/Insurance Company contended that the Tractor is only meant for agricultural purposes and the Trailer can be used and carried only for bringing agricultural produce and that can be used only for the agricultural purpose, whereas, at the time of accident, 18 passengers were travelling and that it shows that all the claimants were unauthorised occupants/passengers. Even otherwise, it is only goods vehicle and it is not meant for carrying the passengers or to be used as

passenger's vehicle. Therefore, in this case, the vehicle has been used and the disclosed facts and even the FIR marked before the Tribunal, clearly shows that at the time of accident, the Tractor through Trailer was carrying passengers and therefore, there is clear violation of the purpose for which the vehicle should have been used and the Insurance Policy will not be covered for the claimants. If at all any accident occurs and due to any accident, any driver of the Tractor will be coolie workers and that too, only one person travelled with the Tractor while carrying passengers through Trailer. Even a coolie is not authorised to travel in the Trailer. Therefore, there is a clear violation of the Insurance Policy and the Insurance is not covered for the claimants. Therefore, the Tribunal failed to consider the said aspects and the learned counsel for the appellant/Insurance Company prayed to discharge the Insurance Company from the liability to pay the compensation.

4. Learned counsel for the claimants, as also the owner of the vehicle, submitted that the accident is due to rash and negligent driving by the driver of the Tractor and a case was also registered against the driver of the Tractor and due to the rash and negligent driving by the driver, the accident had occurred leading to the vehicle getting capsized. As a result of the

same, the claimants sustained injuries. At the time of accident, the Tractor was insured with the appellant/Insurance Company and therefore, they are liable to pay the compensation. Even otherwise, for violation of the policy, even the Insurance Company at the first instance shall pay the compensation and thereafter they can recover the amount only from the owner.

5. Heard both sides and perused the materials available on record.

6. Admittedly, at the time of accident, the claimants were travelling in the Tractor and it capsized and all the passengers sustained injuries. However, the fact remains that the Insurance Policy is not covered for the Tractor which is to be engaged for agricultural activities. It is the case of the claimants that they were travelling only as Coolie, apart from the owner/driver of the Tractor. At the time of accident, they were all travelling in the Trailer, which is not meant for carrying any gratuitous passengers and it can only be used for any transport of agricultural produce/goods and the passengers shall not be entertained for travel. Therefore, the Insurance Policy is not covered for those who sustained injuries and the claimants have unauthorisedly travelled in the Tractor. Therefore, the Tribunal failed to consider the above aspects and hence, both these appeals are liable to be

allowed.

7. The appellant/Insurance Company is exonerated from the liability and it is the second respondent/owner of the Tractor who is liable to pay the compensation as computed by the Tribunal. The claimants are at liberty to get fair compensation from the owner of the Tractor/Trailer and since the accident had occurred due to the rash driving of the Tractor and that the owner of the Tractor is liable to pay the compensation to the claimant, since the Insurance policy is not covered to the claimants, the present appeals are allowed. The claimants were travelling in the offending vehicle at the time of accident, and they are entitled to compensation under the head "no fault liability".

8. The Insurance Company herein is exonerated from their liability to pay the compensation. The claimants who were travelling at the time of accident, are entitled to get the compensation under the head 'no fault liability'. The owner of the offending vehicle is directed to pay the compensation of Rs.25,000/- to the claimants under 'no fault liability'. The Insurance Policy is not covered for those who travelled in the Tractor/Trailer, however, the claimants are entitled to get the compensation only under the 'no fault liability'.

9. Since the Insurance Policy is not covered for those who travelled in the Tractor/Trailer, however, as per the 'no fault liability' principle, the claimants are entitled to get the compensation only under the head 'no fault liability'.

10. The decision of the Supreme Court relied on by the learned counsel for the claimants, in the case of United India Insurance Company Limited Vs. K.M.Poonam and others, reported in 2015 (15) SCC 297, is distinguishable on facts and the same is not applicable to the facts of the present case on hand.

11. For the reasons stated above, all these appeals are allowed. The claimants are entitled to get a sum of Rs.25,000/- under 'no fault' liability, with interest @ 7.5% per annum from the date of claim petition till the date of payment. The owner of the offending vehicle shall deposit the above said amount before the Tribunal and the same shall be disbursed to the claimants. The Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal. The proportion of allocation of shares as adopted by the Tribunal, shall stand confirmed. There shall be no order as to costs. Consequently, C.M.Ps. are closed.

13.09.2023

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To

1. Motor Accidents Claims Tribunal (Special Sub-Court),

   Tirupattur, Vellore District.

2. The Section Officer, V.R.Section, High Court, Madras.

P. VELMURUGAN, J

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