



C.M.A(MD)No.179 of 2008

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2022

Pronounced on :2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.179 of 2008

The Branch Manager,
Oriental Insurance Company Limited,
555/1G.H.Road,
Theni – 625 531.

... Appellant/Respondent No.2

Vs.

1.Rajapandian @ Kumar

... 1st Respondent /Petitioner

2.V.Alagarsamy

... 2nd Respondent/2nd Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, against the award, dated 03.08.2007 made in W.C.No.173 of 2006 on the file of the Deputy Commissioner of Labour, Dindigul.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.R.Sundar

For R2 : No Appearance



C.M.A(MD)No.179 of 2008

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in W.C.No.173 of 2006, dated 03.08.2007 on the file of the Deputy Commissioner of Labour, Dindigul. The appellant is the second respondent. The first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

The Petitioner/Rajapandian @ Kumar was working as a cleaner in a Tractor bearing Registration No.TN-57-E-9895 and was earning Rs.4,000/- per month and Rs.50/- per day as batta. On 19.02.2006 at about 2.30 p.m. the tractor was driven by its driver in a rash and negligent manner and the Tractor capsized. The Petitioner fell down from the Tractor and injured. He was taken to the Dindigul City Hospital. Fourth, fifth and sixth, rib bones were fractured. The accident happened in the course of employment and the petitioner prays a sum of Rs.5,00,000/- (Rupees Five lakhs only) as compensation.



C.M.A(MD)No.179 of 2008

3. Brief substance of the counter filed by the first respondent is as follows:

The profession, income and age of the petitioner has to be proved. The manner of accident was wrongly narrated in the petition. There is no medical expenses. The injuries are completely cured and the petitioner is carrying on his normal life. The claim is excessive. The vehicle was insured with the second respondent. The second respondent is liable to pay compensation.

4. Brief substance of the counter filed by the second respondent is as follows:

The petitioner has to prove the manner of accident. The accident did not take place during the course of employment. The petitioner travelled in the vehicle as a passenger. He could not claim any compensation. The injuries are to be proved. The petitioner has to prove that the first respondent is the owner of the vehicle and the vehicle was insured with the second respondent. The petitioner has to prove that there is no violation of policy conditions. The first respondent failed to inform the accident and hence he has violated the policy conditions. It is wrongly stated that the petitioner was travelling as a cleaner in the vehicle. The Tractor was registered for agriculture purpose and



C.M.A(MD)No.179 of 2008

only the driver is entitled to travel in the vehicle. Passengers are not allowed to travel in the vehicle. There is no coverage for cleaner or for a passenger travelling in the Tractor. Hence, there is no necessity for the second respondent to pay compensation.

5.Two witnesses (2) were examined and six (6) documents were marked on the side of the petitioner. One witnesses (1) was examined and one document was marked on the side of the respondents. The Tribunal has awarded a sum of Rs.1,37,817/- as compensation, to be paid by the second respondent.

6.Against the order, the appellant has preferred this appeal on the following grounds:

The first respondent/ claimant has travelled in the Tractor as a passenger and thereby, he violated the terms and conditions of the policy. The trailer was not attached to the Tractor at the time of accident. Hence, the appellant is not responsible and not liable to pay compensation. The Tribunal ought to have considered that the Tractor is a goods vehicle and seven persons can not travel in the Tractor.



C.M.A(MD)No.179 of 2008

7.This Civil Miscellaneous Appeal was admitted on the following

Substantial Questions of Law:

"1.Whether the Tribunal below is correct in fixing the liability on the appellant when admittedly the trailer was not attached to the tractor at the time of accident?

2.Whether the Tribunal below is correct in coming to the conclusion that the tractor is a goods vehicle and whether 7 persons can travel in the tractor against the permissible capacity under policy?"

Issue Nos.1 & 2 :

8. On the side of the appellant, it is stated that the trailer was not attached with the tractor at the time of accident and as such the appellant is not liable to pay compensation to the first respondent. Seven persons travelled in the tractor at the time of accident. The seating capacity is the Tractor is only for one person that is a driver. Passengers are not entitled for compensation.

9. A judgment of the ***Hon'ble High Court of Kerala*** in the case of ***National Insurance Co.Ltd., vs. kottam***, reported in ***2003 (2) TAC 849*** is cited, wherein, it is held as follows:-



C.M.A(MD)No.179 of 2008

"Tractor not permitted to carry passengers. As the policy was only an Act policy and as the vehicle in question was not intended to carry goods or passengers, the claimants should not have been directed to be compensated; as the injures and the deceased were admittedly passengers in the tractor".

10. Another judgment of the ***Hon'ble High Court of Gauhati*** in the case of ***Oriental Insurance Co.Ltd., Vs. Arun Dutta And Others***, reported in ***2003 (2) TAC 853*** is cited, wherein, it is held as follows:-

"Tractor & Trailer – would not come within definition of "goods-carriage" under Section 2(14) – Nor definition of "Tractor" and "Trailer" under Section 2(44) & 2(46) would cover carriage of goods by another person for his business activities – Claim petition, held, not maintainable".

11. Another judgment of the ***Hon'ble Supreme Court of India*** reported in ***2007 (1) TN MAC 205 (SC)*** in the case of ***New India Assurance Co.Ltd., vs. Vadwati and others***, is cited, wherein it is held as follows:-

"Tractor, meant to be used for agricultural work, used for carrying passengers – Violation of terms of Insurance Policy – Plea of Insurer before the Tribunal that Insurer not responsible to indemnify to any award and to pay any amount to the claimants".



C.M.A(MD)No.179 of 2008

WEB COPY

12. Another judgment of this Court in the case of ***Divisional Manager, New India Assurance Company Limited, Thanjavur*** reported in (2008) 7 ***MLJ 588*** is cited, wherein it is held as follows:-

"Liability of Insurance Company to pay compensation to gratuitous passengers – Claimants travelling in Tractor cum Trailor at the time of accident – vehicle travelled was not intended for travelling any kind of passengers – Tractor not meant for transporting passengers – Insurance Company not liable to pay compensation for death or injury to any gratuitous passengers".

13. Another judgment of the High Court of ***Kerala at Ernakulam*** in the case of ***United India Insurance Co.Ltd., vs. C.I.Abraham*** reported in 2009 ***ACJ 492*** is cited, wherein, it is held as follows:-

"Injuries sustained by passenger travelling in a tractor sitting on its mud-guard when the vehicle overturned-Whether the insurance company is liable – Held: no; injured was himself negligent as he was travelling by sitting on the mudguard which is prohibited; passenger cannot travel in the tractor as per policy".



C.M.A(MD)No.179 of 2008

WEB COPY

14. Another judgment of this Court in the case of ***Iffco – Tokio General Insurance Co.Ltd., vs. Sulochana and Others*** reported in **2010 ACJ 1522** is cited, wherein, it is held as follows:-

"Workman engaged as coolie was travelling on mudguard of tractor, fell down due to jolt resulting in his death – Policy covers risk of driver only".

15. The judgment of the ***High Court of Madras*** in the case of ***United India Insurance Co.Ltd.,*** reported in **2010 ACJ 2059** is cited, wherein, it is held as follows:-

"Death of a person travelling in tractor when it turned turtle due to rash and negligent driving – tractor was insured for agricultural purpose, not for carrying passenger and risk of driver of tractor only was covered under the policy- whether insurance company is liable – Held;no".

16. On the basis of the oral evidence of PW1, the Tribunal has fixed liability on the second respondent / driver of the tractor. There is no dispute regarding the manner of accident. Hence, it is decided that the accident



C.M.A(MD)No.179 of 2008

occurred due to the negligence of the driver of the vehicle. No defence was taken in the counter filed by the second respondent that the first respondent / petitioner was not an employee under the second respondent. A policy copy was marked as Ex.R1. RW1 was examined. He has deposed that the policy was effective at the time of accident and that premium was paid for the driver and six workers.

17. Both the substantial questions raised by the petitioner is revolving on only one point, that is, “whether seven persons can travel in a Tractor?”. This question is not a substantial question of law. Policy copy was marked as Ex.R1. R.W.1 was examined and he has deposed that the policy was effective at the time of accident and that premium was paid for the driver and six workers. RW1 has deposed that as per the column 7 of the policy, driver, cleaner and the conductor were covered. It is seen that additional premium was paid for a driver, cleaner and for six passengers. When the seating capacity is available only for the driver, the appellant should not have collected premium for six passengers. In the above circumstances, it is decided that the insurance company is liable to pay compensation.



C.M.A(MD)No.179 of 2008

WEB COPY

18. Since the Insurance Company has received premium for cleaner and six passengers, the Insurance Company is not entitled to raise this point before this Court. Hence, it is decided that the substantial question of law raised by the appellant is not sustainable.

19. The Civil Miscellaneous Appeal is dismissed. The order of the Deputy Commissioner of Labour, is hereby confirmed. No costs

.....2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No

vsd

To

- 1.The Deputy Commissioner of Labour,
Dindigul.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.179 of 2008



WEB COPY



C.M.A(MD)No.179 of 2008

R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.179 of 2008

.....2023



C.M.A(MD)No.179 of 2008

At the time of accident, the age of the petitioner was 27 years. No document was marked to prove the salary of the petitioner. Therefore, as per G.O.No.2(19)47, Labour and Welfare Department, dated 01.08.2003, the basic salary for the cleaner is fixed as Rs.3104/- and Rs.481/- is fixed as DA and totally a sum of Rs.3,585/- is fixed as salary for the cleaner.

18. PW2 has deposed that the petitioner sustained 30% of permanent disability and the Tribunal has fixed disability at 30%. For the age of the petitioner, the Labour Commissioner fixed the factor at 213.57 and fixed the monthly income at Rs.3,585/- and calculated future assessment at 30% and calculated the loss of income at Rs.1,37,817/-. The Tribunal has fixed the loss of income as Rs.1,37,817/-, which is reasonable.

19. Hence, it is decided that the quantum of compensation awarded by the Tribunal is reasonable. In the above circumstances, there is nothing sufficient enough to interfere with the orders of the Tribunal.

(i) The order passed by the Tribunal is upheld.

(ii) The appellant / Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.1,37,817/- (Rupees One lakh Thirty Seven Thousand Eight Hundred and Seventeen only) within a period of 30 days from the date of receipt of a copy of this order, failing which the appellant/ insurance company shall deposit the entire compensation amount to the credit of W.C.No.173 of 2006 on the file of the Deputy Commissioner of Labour, Dindigul, within a period of 30 days from the date of receipt of a copy of this order, failing which the amount shall be deposited with an interest at the rate of 12% per annum, from the date of accident till the date of deposit.

(iii) On such deposit being made, the first respondent / claimant is at liberty to withdraw the amount with proportionate interest and costs.