BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.62 of 2020

The Branch Manager,
HDFC ERGO General Insurance Company Ltd.,
Near Kamarajar Statue,
Vilakkuthoon, Madurai City,
Madurai District. ... Appellant/2nd Respondent

Vs.

1.R.Ramar

2.R.Murugeswari ... Respondents/Petitioners

3.S.Balakumar ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the judgement and decree dated 03.07.2019 in M.C.O.P.No.156 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur and allow the appeal.

For Appellant : Mr.J.S.Murali

For R1&R2 : Mr.M.Jothibasu

For R3 : Mr.P.Ganapathi Subramanian

JUDGEMENT

The present appeal has been filed by the insurance company challenging the liability and quantum arising out of M.C.O.P.No.156 of 2018 on the file of Motor Accident Claims Tribunal, Virudhungar at Srivilliputhur.

2. As per the claim petition, a 6 year old boy, by name Ram Kumar and other children who were travelling on the road were asked to climb upon a tractor, by the driver of the tractor by name Bose. While the tractor was driven in a rash and negligent manner, it got capsized and the said minor child fell down and later succumbed to injuries. An F.I.R was registered as against the driver of the tractor in Crime No.1491 of 2013 on the file of Koomapatti Police Station. According to the claimants, the deceased was a bright student and they contended that the 1st respondent being the owner of the tractor and the 2nd respondent being an insurer are liable to pay a compensation of Rs.3,00,000/- (Rupees Three Lakh only).

3. The owner of the vehicle filed a counter contending that there was no such accident on 17.07.2013 and therefore, neither the 1st respondent nor the 2nd respondent are liable to pay any compensation. The 2nd respondent, namely the insurance company had filed a counter contending that the 1st respondent had permitted some minor children to travel as an unauthorized passenger in the trailer and thus, the deceased was thrown away from the tractor and he had passed away. The insurance company has further contended that as per the registration certificate of the tractor, only one person is entitled to travel, namely the driver. Therefore, the insurance company is not liable to pay any compensation on the ground that the 1st respondent had violated the policy conditions.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the deceased minor boy was travelling on the trailer and due to rash and negligence of the tractor driver, this accident has happened. The tribunal has also arrived at a finding that in view of the fact that no one is permitted to travel upon the trailer, it is a clear case of policy violation and has directed the insurance company to pay the compensation and recover the same from the owner of the tractor. Challenging the said award, the insurance company has filed the present

appeal.

5. According to the learned counsel appearing for the appellant, only the tractor was insured with the insurance company. There is no proof or record to show that any trailer was attached to the tractor at the time of accident. Therefore, it is clear that the children have travelled only on the tractor. The minor boy who was among so many children, who travelled on the tractor was thrown away from the tractor and after falling down, he has succumbed to the injuries on the way to the hospital. According to the learned counsel appearing for the appellant, as per the registration certificate of the tractor, only one person, namely the driver alone can travel in the tractor. Any person who travelled in the tractor apart from the driver would only be considered to be an unauthorized passenger, for which the insurance company cannot be held liable. This cannot be considered to be a mere policy violation. Therefore, he prayed for exonerating the insurance company from the liability.

6. The learned counsel appearing for the owner had contended that the manner of accident has not been proved by the claimant. It is not known whether the deceased had travelled on the tractor or the trailer or

whether the child was walking on the road while he met with an accident. Therefore, according to him, when the claimants have miserably failed to prove the manner of accident, the owner cannot be held liable and in consequence, the insurance company is also not liable. Therefore, he contended that the tribunal was wrong in arriving at a finding that the accident has taken place due to the negligence on the part of the driver of the tractor.

7. The learned counsel appearing for the claimants had contended that the driver of the tractor had voluntarily invited the children, who were walking on the road and asked them to climb upon the tractor. Thereafter, one of the traveller, namely, the minor boy was thrown away from the tractor and he had died due to the injuries sustained by him. Therefore, there is no negligence could be attributed to the minor child and the award passed by the tribunal may be confirmed.

8. I have carefully considered the submissions made on either side and also perused the pleadings and documents.

9. The tribunal has passed the award of pay and recovery as against the insurance company on the ground of violation of policy conditions. The said award has been challenged only by the insurance company and not by the owner of the vehicle.

10. Admittedly, there are no records to establish that some of the children had travelled in the trailer and no insurance policy has been produced for the trailer. There is no motor vehicle inspector's inspection report with regard to the tractor and trailer before the Court. Therefore, it could only be construed that the children were travelling only on the tractor and not on the trailer. As per the registration certificate, only one person can travel in a tractor, namely the driver and therefore, the travelling of the children in the tractor could only to be considered to be unauthorized, for which the insurance company cannot be held liable. When the insurance company cannot be held liable, the question of pay and recovery will not arise. The award passed by the tribunal as against the insurance company directing them to pay the compensation amount and recover the same from the owner is hereby set aside. It is modified to the extent that the 1st respondent in the claim petition, namely the owner of the vehicle alone is liable to pay the compensation. Since the owner of

the vehicle has neither challenged the liability nor the quantum, this Court is not inclined to interfere in the said findings. The appeal is allowed to the extent as stated above and the award of the tribunal stands modified. The award amount deposited by the insurance company pursuant to the orders of the tribunal shall be refunded by the tribunal along with accrued interest.

11. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

13.03.2023

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

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To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Srivilliputhur,
Virudhunagar District.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.62 of 2020

13.03.2023