



C.M.A.(MD)No.364 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.03.2023

Delivered On : 27.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.364 of 2020

The Oriental Insurance Company Limited,
Rep. By its Divisional Manager,
1024-B, Vijaya Complex,
Opp. Theni Bus Stand,
Cumbum Road,
Theni District.

.. Appellant

Vs.

1.P.Kamaraj
2.Panchavarnam
3.Minor Suvalakshmi
(Minor 3rd respondent by her father and
next guardian of 1st respondent Kamaraj)
4.K.Raja
5.Govindaraj
6.Sri Vairamuthu Trailer,
Rep. By the Proprietor of
Mahalingam,
Madurai Road, D.No.I-IA,
Opp. TNSTC Bus Diplo,
Srivilliputhur Town,
Virudhunagar District.



C.M.A.(MD)No.364 of 2020

6.The National Insurance Company Limited,
Rep. By the Branch Manager,
Tenkasi Road,
Rajapalayam Town,
Virudhunagar District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 12.11.2019 in M.C.O.P.No.232 of 2013 on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Srivilliputhur.

For Appellant	: Mr.C.Karthik
For Respondents 1 to 3	: Mr.T.Pon Ramkumar
For 5 th Respondent	: Mr.P.Santhosh Kumar
For 7 th Respondent	: Ms.P.Malini
For Respondents 4 to 6	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.232 of 2013 dated 12.11.2019, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Srivilliputhur.

2.The appellant herein is the 3rd respondent, the respondents 1 to 3 herein are the petitioners, the respondents 4 and 5 herein are the respondents 1 and 2 and the respondents 6 and 7 herein are the respondents 4 and 5 in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.232 of 2013, claiming compensation for the death of one Periyandavar, in an accident that took place on



C.M.A.(MD)No.364 of 2020

04.09.2013. The Tribunal has awarded a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.232 of 2013 is as follows:

On 04.09.2013, when the deceased Periyandavar was working as a loadman in a tractor bearing registration No.TN-74-Z-5811, the tractor driver drove the vehicle in a rash and negligent manner and the deceased was thrown away from the tractor and he died on the spot. The deceased was aged about 15 years and the petitioners are his dependants and they claim a sum of Rs.11,90,000/- (Rupees Eleven Lakhs and Ninety Thousand only) as compensation.

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

The tractor was meant only for agricultural purpose. At the time of accident, the tractor was used for commercial purpose. The policy conditions are violated. The deceased travelled in the vehicle as an unauthorized passenger. The age of the deceased was 15 years. There is no possibility of the petitioners to depend on the income of the deceased. The petitioners have to prove that the vehicle was insured with the third respondent. The first respondent sold the vehicle to the second



C.M.A.(MD)No.364 of 2020

respondent. There is no policy in the name of the second respondent. The third respondent is not liable to pay compensation. The claim is excessive.

5. Brief substance of the counter filed by the fifth respondent therein is as follows:

The vehicle has sitting capacity only for the driver. The deceased travelled on the mud guard and the deceased violated the policy conditions. The driver of the vehicle was not having valid driving licence. The age, income and profession are all denied. The deceased who travelled in the goods carrier, is responsible for the accident. The claim is excessive. The first respondent is liable to pay compensation.

6. On the side of the petitioners, two witnesses were examined and two documents were marked. On the side of the respondents therein, three witnesses were examined and four documents were marked. After trial, the Tribunal has awarded a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation to be paid by the third respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:-

The Tribunal failed to note that the sitting capacity of the tractor is only for one person I.e. driver. The tractor was insured only as a miscellaneous Class D vehicle and the policy was liability only policy. The loadman was not permissible to



C.M.A.(MD)No.364 of 2020

travel in the tractor. The insurance company is not liable to pay compensation. The liability of the insurance company is extended only to the risk covered by the policy of insurance. The fifth respondent, the owner of the vehicle is liable to pay compensation. As per the FIR, the deceased was getting down from the mudguard of the tractor and that the driver drove the vehicle in a rash and negligent manner and that the deceased fell down and died. The tractor has to be used only for agriculture purpose and not for carrying passengers. The gracious passenger travelling in a tractor is not entitled for compensation.

7. On the side of the appellant, it is stated that the deceased travelled in the mudguard of the tractor and that he is a gracious passenger. In the FIR, it is clearly stated that the deceased travelled in the mud guard of the tractor. The sitting capacity for the tractor is only for the driver.

8. On the side of the respondents 1 to 3, it is stated that the tractor was insured with the appellant. The trailer was insured with the second respondent. The deceased fell down from the mudguard and that the Tribunal ordered to pay and recover. Ex.R3 is the policy wherein Rs.50/- was collected as the premium for conductor, cleaner and IMT and that the claimants are entitled to claim compensation.



C.M.A.(MD)No.364 of 2020

WEB COPY

9. On the side of the owner of the vehicle, it is stated that the premium for driver and the employee was paid and that the deceased used to work as a coolie and that the extra premium was also paid.

10. On the side of the respondents 1 to 3, it is stated that the deceased was working as a coolie and prayed for a direction that the insurance company has to pay the award amount and the insurance company may recover the amount from the owner of the vehicle. To substantiate the claim, a judgment of this Court in the case of *Pachiayammal and another v. Elumalai and another* reported in **2020 SCC Online Mad 21285** is cited, wherein it is stated as follows:

“The Hon’ble Supreme Court further held that the Tribunal and the high Court therefore should have held that the owner of the vehicle was guilty of each of conditions of the policy. However, taking note of the fact that the accident had taken place sometime 1999 and considering the fact that the claimant was a coolie worker and would be in a position to realise the due from the owner of the vehicle, it was of the view that to do complete justice to the parties, a direction can be given to the appellant insurance company to pay and recover the amount from the owner of the vehicle to serve the ends of justice. While passing the aforesaid order, the Hon’ble Supreme Court also noted the fact that the insurance company had deposited the amount to the account of the case before the Tribunal.”



C.M.A.(MD)No.364 of 2020

WEB COPY

11. On the side of the respondents 1 to 3, it is stated that additional premium was paid and hence, the policy is a comprehensive policy and the insurance company is directed to pay the compensation at the first instance and the insurance company may be permitted to recover the same from the owner of the vehicle. In support of this contention, a judgment of this Court in the case of ***Branch Manager v. Chellammal and another*** reported in ***2022 SCC online Mad 5937***.

12. On the side of the respondents 1 to 3, it is stated that the insurance company is to be directed to pay the entire compensation amount with interest and costs and the insurance company may be permitted to recover the same from the owner of the vehicle. To substantiate the claim, a judgment of this Court in the case of ***New India Assurance Company Ltd., v. K.Rajendran and others*** reported in ***2020 SCC Online Mad 21291*** is cited.

13. The learned counsel for the respondents 1 to 3 would rely upon a judgment of this Court in the case of ***United India Insurance Co. Ltd., v. Kalaivani and others*** reported in ***2017 SCC online Mad 37737***, wherein it is stated as follows:

“The ratio laid down in these two judgments squarely applies to the facts and circumstances of the present case. In the



C.M.A.(MD)No.364 of 2020

case on hand, the deceased was loading sugarcane reeds in the tractor-trailer and he fell down from the trailer and had died due to the head injuries sustained by him.

.....The appellant should have deposited the award amount together with the accrued interest before the Additional Commissioner prior to the filing of the appeal and produced the certificate as proof of the same. If the entire award amount as stated is not deposited by the appellant, the Registry should not have numbered the appeal. For the reasons stated above, I do not find any ground much less any substantial question of law to interfere with the order passed by the Additional Commissioner for Employees Compensation, Puducherry. The appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed.”

14. On the side of the fifth respondent, it is stated that Rs.50/- was paid towards premium for one driver and one employee. The insurance policy covers the coolie worker and there was no rebuttal evidence on the side of the insurance company. In support of his contention, a judgment of this Court in the case of ***New India Assurance Co. Ltd., v. Raman and others*** reported in **2014 (1) TNMAC 436** is cited, wherein it is stated as follows:

“Deceased, an agricultural coolie travelling in Tractor – trailer sitting on tow bar connecting Trailer with tractor, if, covered by policy of insurance or an unauthorized passengers – policy of



C.M.A.(MD)No.364 of 2020

insurance covering liability in respect of Driver as also coolies, employees connected with operation and loading/unloading – would show contract between owner/insured and insurer – in view of contractual liability, held, insurer liable to pay compensation.”

15.The learned counsel for the appellant would rely upon a judgment of this Court in the case of *the Branch Manager v. Kaliyammal and another* in **C.M.A.(MD)No.926 of 2021**, wherein the insurance company was exonerated towards liability and the owner was held liable.

16.The learned counsel for the appellant would rely upon another judgment of this Court in the case of *the Manager v. Sathish kumar and another* in **C.M.A.(MD)Nos.46 and 163 of 2012**, wherein the insurance company was exonerated and the liability was fixed on the owner of the vehicle.

17.A perusal of the insurance policy Ex.R3 reveals that a premium of Rs. 50/- was paid for driver, conductor and cleaner. When there was no sitting capacity for conductor and cleaner, it is wrong on the part of the appellant/insurance company to receive premium for conductor or cleaner. After receiving premium for conductor and cleaner, the appellant/insurance company cannot make a stand that the policy did not cover any other person. The policy is a comprehensive policy and hence, it is



C.M.A.(MD)No.364 of 2020

decided that the insurance company has to pay the claimants at the first instance and the insurance company may recover the same from the owner of the vehicle.

18.The quantum of compensation awarded was not specifically questioned in the grounds of appeal.

19.On the side of the appellant, it is stated that the deceased was aged about 15 years and that it is not possible for the deceased to contribute anything to the family. The Tribunal fixed the monthly income as Rs.4,000/- (Rupees Four Thousand only).

20.Considering the date of accident, the income fixed by the Tribunal is reasonable. The Tribunal failed to add future prospects in calculating the loss of income. After adding 40% towards future prospects, the loss of income is calculated as Rs.5,600/- (Rupees Five Thousand and Six Hundred only). The Tribunal has deducted 1/3rd of the income, which is wrong. The deceased being a bachelor, 50% of the income is to be deducted towards the own expenses of the deceased. After deducting 1/2th of the income, the deceased might have contributed Rs.2,800/- (Rupees Two Thousand and Eight Hundred only) for his family members. The age of the deceased at the time of accident is 15. Hence, multiplier '18' is applicable. After



C.M.A.(MD)No.364 of 2020

applying multiplier '18', the loss of income is calculated as Rs.6,04,800/- (Rupees Six Lakhs Four Thousand and Eight Hundred only).

21.The Tribunal has awarded a sum of Rs.45,000/- (Rupees Forty Five Thousand only) towards loss of love and affection and Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses, which are reasonable. In total, a sum of Rs.6,64,800/- (Rupees Six Lakhs Sixty Four Thousand and Eight Hundred only) is awarded as compensation.

22.In the result, this Civil Miscellenaous Appeal is **partly allowed**. The compensation is reduced from Rs.7,00,000/- to Rs.6,64,800/-.

(i)The respondents 1 to 3 are entitled to a sum of Rs.6,64,800/- (Rupees Six Lakhs Sixty Four Thousand and Eight Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit. The appellant is directed to deposit Rs.6,64,800/- (Rupees Six Lakhs Sixty Four Thousand and Eight Hundred only) with 7.5% interest from date of the claim petition till the date of deposit and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order.

(ii)The second respondent/ mother of the deceased is entitled to Rs. 2,64,800/- (Rupees Two Lakhs Sixty Four Thousand and Eight Hundred only) with propotionate interest and costs. The respondents 1 and 3/father and minor sister of



WEB COPY



C.M.A.(MD)No.364 of 2020

R. THARANI, J.

MRN

the deceased are entitled to Rs.2,00,000/- (Rupees Two Lakhs only) each with proportionate interest. The Tribunal is directed to deposit the share of the third respondent/minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the father and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. On deposit, the respondents are permitted to withdraw their respective shares, after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any. Excess amount if any shall be refunded to the appellant. No Costs.

27.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

MRN

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge, Srivilliputhur.

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

C.M.A.(MD)No.364 of 2020