BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.10.2022

Pronounced on : 16.03.2023

CORAM

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

C.M.A(MD)No.5 of 2020

National Insurance Company Limited,
Kamarajar Bazar,
Bodinaickanur Taluk,
Theni District.
Represented through the Manager,
Bodinaickanur. ...Appellant /2nd respondent

Vs

1.R.Thaniarasu

2.T.Selvi

3.T.Ramesh ...1st to 3rd Respondents / Petitioners

4.Ramasamy .. 4th respondent/1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 14.03.2019, passed in MCOP No.218 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Theni.

For Appellant : Mr.J.S.Murali

For R1 to R3 : No Appearance

For R4 : Mr.K.Kumaravel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.218 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Theni. The appellant herein is the second respondent, respondents 1 to 3 are the claimants, fourth respondent is the first respondent in the claim petition.

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

On 06.04.2015, when the deceased and two other persons travelled in a lorry bearing registration number TN 27 L 7092, the driver of the lorry drove the vehicle in a rash and negligent manner and toppled the lorry at a turning. The deceased sustained injuries and he died on the spot. The deceased was a road supervisor and he was earning Rs.15,000/- per month. The petitioners are his dependants. They claim a sum of Rs.30,00,000/- as compensation.

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

The manner of accident was suppressed by the petitioners. The deceased and the others travelled in the lorry as unauthorized passengers. The policy is only an Act policy. The policy conditions are violated. The accident has occurred due to the negligent act of the deceased. The driver of the vehicle was not having valid driving licence. The claim is excessive. The petitioners have to prove that the driver of the vehicle was having valid driving licence.

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

The driver of the tipper lorry was not having valid driving licence. As per the permit, three persons were permitted to travel in the lorry. But at the time of accident four persons were travelling. The deceased travelled as an unauthorized passenger. Policy conditions are violated. Respondents are not liable to pay compensation. The deceased did not work under the owner of the lorry or the contractor.

5.Two witnesses were examined and thirteen documents were marked on the side of the petitioner. Three witnesses were examined and two documents were marked on the side of the second respondent. The Tribunal awarded a sum of Rs.17,98,200/- as compensation.

6.Against the award, the second respondent preferred this appeal on the following grounds:

The Tribunal failed to consider that Ex.R2 is only an Act policy, which covers only third parties. The deceased was not a third party. The appellant is not liable to pay compensation. The Tribunal failed to consider that the vehicle is a goods carrier and the deceased and two others travelled as unauthorized passengers. The Tribunal is wrong in converting the claim under Section 140 and 166 of the Motor Vehicles Act, into a claim under the Workmen Compensation Act. R.W.2 has denied the employment of the deceased. The Tribunal is wrong in fixing the monthly income as Rs. 11,000/-. The Tribunal ought to have fixed the multiplier on the basis of the age of the mother of the deceased. The Tribunal is wrong in awarding Rs. 1,35,000/- towards conventional charges.

7.On the side of the appellant, it is stated that since the policy is an Act only policy, the Tribunal converted the claim under the Workmen Compensation Act. But has applied the provisions only under the Motor Vehicles Act. The Tribunal ought to have fixed compensation for the relevant factor under the Workmen Compensation Act. Fixing compensation under the provisions of Motor Vehicles Act and awarding compensation under Workmen Compensation Act is wrong.

8.On the side of the fourth respondent / owner of the vehicle it is stated that the evidence of R.W.2 is not reliable. A premium of Rs.150/- was collected for three employees. Only one claim was made. Hence, if the respondents/ claimants are entitled to claim compensation, the fourth respondent is not liable to pay compensation. But it was the duty of the insurance company to disprove the non availability of driving licence. The burden is on the insurance company.

9.On the side of the owner of the vehicle a judgment of this Court reported in **2022 (1) TN MAC 31** in the case of **New India Assurance Co. Ltd., Vs P.Palaniammal**, is cited, wherein it is held that, *"11. From the evidence of P.W1 to PW3, Ex.P3, Ex.P4 & Ex.R3, it is decided that the accident took place due to the rash and negligent driving of the Van Driver. Ex.R1- Policy copy reveals that additional premium (OD) was paid for Workers. Hence, the Appellant/Insurance Company is liable to pay Compensation."*

10.Another judgment of this Court reported in **2001 (3) CTC 219** in the case of **G.Nagendra Devi and 3 others Vs Y.Mosses and 2 others**, is cited, wherein it is held that,

"It is clear from the above decision that the burden is on the insurance company and it was failed to take proper and necessary steps to verify whether the offender has valid licence or not. In other words, the responsibility is on the insurance company to discharge its burden and prove that the driver of the vehicle in question was not having valid driving licence not only before the accident, but also at the time of the accident or he was debarred from holding a valid driving licence. In the light of the above legal position and in the absence of positive steps being taken by the insurance company, we are unable to accept the conclusion arrived by the Tribunal exonerating the Insurance company from its liability. We hold that the second respondent - insurance

company is liable to pay the award amount and the contrary view taken by the Tribunal is liable to be set aside."

11. On the side of the appellant, it is stated that the citations referred by the owner of the vehicle are not applicable to the facts of the present case. The owner of the lorry/ R.W.1 did not know either the driver or the deceased. Act policy did not cover the driver or the passengers. Even a pay and recovery order cannot be passed in the case of unauthorized passengers.

12. On the side of the appellant, a judgment of the Hon'ble Division Bench of this Court reported in **2018 (2) TN MAC 731** in the case of **Bharati AXA General Insurance Co.Ltd., vs Aandi**, is cited.

13. On the side of the appellant it is stated that the driver of the lorry was not having valid driving licence. It is the duty of the insurance company to prove the non availability of the driving licence. No such document was marked on the side of the appellant. The appellant failed to prove that there was non driving licence for the lorry driver.

14. It is seen that this petition was filed under the Motor Vehicles Act but the Tribunal has given a finding that the claimants are covered under the Workmen Compensation Act. A perusal of the policy reveals that premium was paid for three labourers under the Workmen compensation Act. It is seen that the deceased was travelling in the vehicle as an employee of the first respondent. There is no possibility for an employer who is doing contract construction work, to know all the employees those who are working under him. On the date of accident, the deceased travelled to supervise the construction along the road side. Hence it is decided that the deceased was an employee of the first respondent and that the accident has happened during the course of employment and that the claimants are entitled to compensation under the Workmen Compensation Act. It is seen that the tribunal has some confession in this regard. Permitting the claimants to approach the concerned forum will lead to unnecessary delay and hence this Court, *suo motu* convert the case under the Workmen Compensation Act. The compensation is calculated as per the provisions of the Workmen Compensation Act.

15.The age of the deceased at the time of accident is 23 years. It is stated that the deceased was getting a salary of Rs.15,000/- per month. There was no proof regarding the income of the deceased. The Tribunal has fixed the notional income at Rs.9,000/- per month which is reasonable.

16. Under the Workmen Compensation Act, for the age of the deceased, the factor for fixing the compensation is 219.95. Hence, for a salary of Rs.9,000/-, the compensation is calculated as Rs.9,89,775/- (50/100 x 9000 x 219.95).

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.17,98,200 to Rs.9,89,775/- (Rupees Nine Lakhs Eighty Nine Thousand Seven Hundred and Seventy Five only).

(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.12,09,725/- (if not already deposited) within a period of 30 days from the date of receipt of a copy of this order to the credit of MCOP No.218 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Theni, failing which the appellant / insurance company shall deposit the entire compensation amount together with interest at the rate of 12% per annum from the date of accident till the date of deposit and proportionate costs.

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ claimant / father of the deceased is permitted to withdraw a share of Rs.4,89,775/-(Rupees Four Lakhs Eighty Nine Thousand Seven Hundred and Seventy Five only) with proportionate interest and cost. The second claimant / mother is permitted to withdraw a share of Rs.5,00,000/- (Rupees Five Lakhs only) with proportionate interest.

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Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accidents Claims Tribunal, Additional District Court (FTC),
Theni.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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C.M.A(MD)No.5 of 2020

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