IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 20.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

C.M.A.No.3174 of 2021
and
C.M.P.No.17968 of 2021

M/s.United India Insurance Co. Ltd.,
No.146/N, Kumar Complex 2nd Floor,
Anna Road, Thiruchengode Taluk,
Namakkal District,
and now doing business at
No.2, Dr.Sankaran Road,
Namakkal Town. .. Appellant/2nd Respondent

Vs.

1.Lakshmi

2.Muthusamy

3.Sumathi

4.Karuppan .. Respondents 1 to 4/Petitioners 1 to 4

5.Velusamy .. 5th Respondent/1st Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment and decree passed in M.C.O.P.No.572 of 2018 dated 25.02.2021 on the file of the Motor Accident Claims Tribunal (Special Court for Trial of Cases registered under SC/ST (POA) Act), Namakkal and be pleased to dismiss the above claim and allow the above Civil Miscellaneous Appeal.

| | | |
|---|---|---|
| For Appellant | : | Mr.J.Chandran |
| For Respondents | : | Mr.M.Lokesh for R-1, R-3 & R-4<br>No appearance for R-5 |

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the judgment and decree passed in M.C.O.P.No.572 of 2018 on the file of the Motor Accident Claims Tribunal (Special Court for Trial of Cases registered under SC/ST (POA) Act), Namakkal.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The brief facts leading to filing of this appeal are as follows:

The first petitioner is the wife, the second and third petitioners are son and daughter and the fourth petitioner is the father of the deceased Raji. On 21.12.2017 at about 12.00 PM, after loading the tractor cum trailer bearing Registration No.TN 34 S 5239 and TN 34 J 2190, while the tractor was parked to unload hay in Vairampalayam Nathakaadu, Natarajan land, the driver of the tractor moved the vehicle and as a result, the deceased Raji fell down and the tractor hit the deceased and he sustained grievous injuries and succumbed to the injuries. The rash and negligent driving of the first respondent driver caused the above accident. A criminal case was registered against the first respondent driver in Crime No.353/2017 under Section 279 and 304(A) IPC on the file of the Nallur Police Station. The deceased was 55 years old and was earning Rs.15,000/- per month. For the loss of the deceased Raji, the claimants, who are the legal heirs of the deceased, filed a claim petition seeking compensation of Rs.10,00,000/- by invoking Section 166 of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the tractor, remained ex-parte. The second respondent/Insurance Company filed counter,

disputing the manner in which the accident has taken place, age, occupation, income of the deceased and also the dependency of the claimants. The second respondent further contended that since there is no policy coverage for load man and the vehicle was plied for hire, which is in violation of the policy conditions, the Insurance Company is not liable to pay compensation.

5. The Tribunal, after considering the evidence placed on record, held that the accident happened due to the rash and negligent driving of the driver of the first respondent vehicle and directed the second respondent/Insurance Company to pay compensation to the claimants. The Tribunal also quantified and awarded compensation as follows:

| **S.No.** | **Heads under which compensation awarded** | **Amount** |
|---|---|---|
| 1. | Loss of dependency | Rs. 8,50,500/- |
| 2. | Future prospects | Rs. 85,050/- |
| 3. | Loss of consortium | Rs. 40,000/- |
| 4. | Loss of love and affection | Rs. 60,000/- |
| 5. | Funeral expenses | Rs. 15,000/- |
| 6. | Loss of Estate | Rs. 15,000/- |
| | Total | Rs.10,65,550/- |

The Tribunal fixed the compensation as Rs.10,65,550/-, out of which, the first petitioner was awarded Rs.4,65,550/- and the petitioners 2 to 4 were awarded Rs.2,00,000/- each. The Tribunal also directed the second respondent/Insurance Company to pay the compensation along with interest at 7.5% per annum from the date of petition till the date of realisation, excluding the default period, if any.

6. Aggrieved over the award, the Insurance Company has preferred this appeal challenging the award on the ground that there is no policy coverage for the deceased, who was a loadman.

7. The learned counsel for the Insurance Company submitted that the Tribunal has not properly appreciated the evidence placed on record and held that the deceased herein is a third party to the proceedings and directed the Insurance Company to pay compensation to the claimants. The Tribunal also failed to note that the liability can be determined only on the basis of the premium collected and seating capacity of the vehicle. He further submitted that the deceased herein is engaged by the first respondent to assist the driver and that he cannot come under the purview of the third

party, hence prays to set aside the award of the Tribunal. The learned counsel also relied on the judgment of the Hon'ble Apex Court in ***United India Insurance Company Limited vs. Suresh K.K. And another [ (2008) 12 SCC 657]***, judgment of the Full Bench of Karnataka High Court in ***Gadhilingappa and others vs. K. Guleppa and others [2021 (2) TN MAC 116 (FB) (Kar.)]*** and the judgments of the Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others [C.M.A. No.1893 of 2020, dated 19.07.2023]*** and ***United India Insurance Co. Ltd., vs. Lakshmamma and others [C.M.A. No. 496 of 2021, dated 03.08.2023]***.

8. The learned counsel for the claimants submitted that there is a coverage for the employee of the first respondent and the premium has also been paid under the caption IMT-20, hence the Tribunal has rightly awarded compensation and prays to confirm the award of the Tribunal. The learned counsel also relied on the judgment of Division Bench of this Court in ***The Divisional Manager, Royal Sundaran Aliance Insurance Co. Ltd., Vellore Vs. Shabiullah and Others [CMA.No. 2183 of 2017, dated 12.09.2018],***

judgments of this Court in ***New India Assurance Co. Ltd., vs. P. Vinayagasundaram and others [2013 (2) TN MAC 620]*** and ***Royal Sundaram Alliance Insurance Company Limited vs. S. Rajakannu and others [C.M.A.(MD) No. 728 of 2015, dated 24.11.2017]***.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. In ***The Divisional Manager, Royal Sundaran Aliance Insurance Co. Ltd., Vellore Vs. Shabiullah and Others*** cited supra, wherein the Division Bench of this Court has considered the case of the cleaner and held that since there was coverage for the cleaner, the Insurance Company is liable to pay compensation and recover the same from the owner of the vehicle. In ***New India Assurance Co. Ltd., vs. P. Vinayagasundaram and others*** cited supra, this Court has held that the cleaner is also entitled for getting compensation, even though there was no coverage, since the accident was taken place while unloading the sand.

11. The Hon'ble Apex Court in ***United India Insurance Company Limited vs. Suresh K.K. And another [(2008) 12 SCC 657]*** dealt with the question regarding that a person, who was travelling in a capacity other than the owner of the goods and held that the insurer would not be liable and it is observed in paragraph 9 and 10 as follows:

> "9. *The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner of the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Courtis as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act 54 of 1994 was to widen the scope of the liability of the insurance company.*
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> *10. It is now well settled that the term "any person" envisaged under the said provision shall not include any gratuitous passenger. (National Insurance Co. Ltd., vs. Baljit Kaur) If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the*

*conditions of policy."*

12. The Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others [C.M.A. No.1893 of 2020, dated 19.07.2023]*** dealt with the question of the liability of the Insurance Company on payment of premium under IMT 28 and observed in Paragraph No.19 as follows:

> *"...It is seen from the policy marked as Ex.R.1 which discloses that the insurance company has collected premium of Rs.50/- for paid driver/conductor/cleaner under IMT 28. As rightly pointed out by the learned counsel for the Insurance Company* ***as per the Guidelines dated 29.03.2012 IMT 28 provides for extra premium per capital to Rs.50/-*** *for driver or cleaner or conductor employed with the conductor with the operation of insured vehicle. Therefore, the deceased would not be covered by the policy. Moreover, the deceased at the time of the accident has travelled in the tractor sitting on mudguard and the tractor being goods vehicle there has been breach of condition of policy. In the Manager* ***IFFCO-TOKYO GENERAL INSURANCE CO.LTD., Vs. G. RAMESH [2012(1) TN MAC 820]*** *this Court referring Asha Rani's case and other judgments, has held as follows:*
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> > *The question as to whether the Insurance Company is statutory liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by the Hon'ble Apex Court in Asha Rani's case by reversing the earlier decision in Saptal Singh's case and further question as to whether the doctrine of "pay and Recover" theory, which is applied till then, by directing the insurer to satisfy the award*

*and to recover the amount from the insured even though the insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench Judgment of our High Court. As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passenger travelling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."*

13. In this case, Ex.P7 – Insurance Policy shows that amount has been collected as premium for the legal liability to the driver of the tractor and it has not stated anything about the liability towards the injuries for the loadman or cleaner or any other person. This Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others*** cited supra has held that the compensation has to be paid to all the persons mentioned under IMT-28, it could be either driver, loadman or cleaner. In this case, the premium is paid only for one person, that too, for the injuries of the driver of the tractor. Admittedly, in this case, the injured is not the driver of the tractor, hence IMT-28 is not applicable to the deceased herein.

14. The next contention is that the claimants are entitled to get compensation for the deceased, who succumbed to injuries during his course

of employment under the first respondent by invoking Workmen Compensation Act. This Court is unable to appreciate the same, since there is no insurance policy coverage for the workmen, the insurance company is not liable to indemnify the owner of the vehicle. Further, the pleadings of the claimants shows that the deceased in this case has travelled by sitting on the tractor and thereafter, got down for unloading the goods and at that time, accident had taken place.

15. Based on the above observations, this Court is of the view that the person, who travelled in the tractor as loadman, is not entitled to get compensation from the Insurance Company under IMT-28. Hence, the contention of the claimants regarding compensation to be paid by the Insurance Company is liable to be rejected and they are only entitled to get compensation from the first respondent / owner of the tractor.

16. Accordingly, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal against the appellant/Insurance Company is liable to be modified to the effect that the claimants are only entitled to get

compensation awarded by the Tribunal from the first respondent/owner of the Tractor, who is the fifth respondent herein. The first respondent/owner of the tractor is directed to deposit the entire compensation amount quantified by the Tribunal within a period of six (6) weeks from the date of receipt of a copy of this order. The appellant/Insurance Company is permitted to withdraw the amount, if any deposited. There shall be no order as to costs. Consequently, connected civil miscellaneous petition stands closed.

**20.06.2024**

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Motor Accidents Claims Tribunal,
(Special Court for Trial of Cases
registered under SC/ST (POA) Act),
Namakkal.

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

**K.RAJASEKAR,J.**

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Judgment made in
C.M.A.No.3174 of 2021

20.06.2024