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C.M.A.No.2794 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2794 of 2021
and CMP.Nos.15948 of 2021 & 15052 of 2021

United India Insurance Co.Ltd.,
Sreeji Changers Mount Road
Bedfort Circle,
Coonoor, Nilgiris 643 101.

... Appellant

Vs.

1. Govinthammal
2. Thilaga
3. Poomani
4. Vinoth
5. Govinthammal
6. The Managing Director
M/s.Tamil Nadu Tea Plantation Corporation Ltd.,
Tan Tea Complex,
Coonoor,
Nilgiris District 643 000

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.08.2019 made in M.C.O.P.No.121 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.



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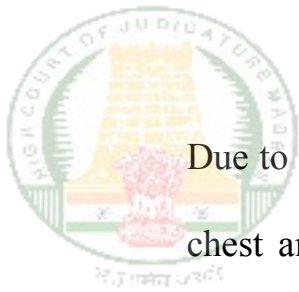
For Appellant : Mr.A.Dhiraviyanathan
For Respondents : M/s.L.Mouli Caveator for R1 to R5
Mr.B.Tamil Nidhi for R6

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 14.08.2019 made in M.C.O.P.No.121 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.

2. The appellant is the third respondent in claim petition and the respondents 1 to 5 are claimants. The claimants have filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Nagendirakumar, who died in the accident that took place on 10.02.2018.

3. According to the claimants, on 10.02.2018 at about 16:30 hrs while the deceased was driving, Tractor bearing Registration No.TN 43 D 2634 on Tan Tea No.II Range Odukkupalam Cherampadi, suddenly one cow crossed the road and the deceased applied sudden brake, lost control and dashed against the road side stone on the right side and fell down into the 30 feet pit.



Due to the said accident the deceased sustained grievous injuries on the head, chest and all over the body and immediately he was admitted at Pandhalar Government Hospital and shifted to Calicut Medical Hospital at Kerala. But unfortunately he died on 11.02.2018 in the same hospital. Therefore, the claimants filed a claim petition claiming a sum of Rs.20,00,000/- as compensation against the Managing Director / 6th respondent who is employer of the deceased and appellant-Insurance Company being the owner and insurer of the tractor respectively.

4. The appellant-Insurance Company filed a counter statement and submitted that the vehicle involved in the accident was used against the policy conditions and motor vehicles Act and Rules. As per the registration certificate issued for the vehicle only two persons are permitted to travel in the vehicle including the driver but at the time of accident three persons including the driver were seated inside the vehicle and one person seated on the back side of the vehicle, which is against the policy conditions. The deceased died only due to his own negligence as the seating capacity of the Tractor is only for two persons including the driver of the Tractor. The deceased travelled in violation of the permit and policy conditions. The owner of the tractor used the vehicle for commercial purpose, but the policy is obtained for agricultural



purpose. In any event, the total compensation claimed is highly excessive and prayed for dismissal of the claim petition.

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5. Before the Tribunal, the first respondent examined herself as P.W.1 and one Muthulingam was examined as P.W.2 and twenty five documents were marked as Exs.P1 to P25. On behalf of the appellant, one Tamilselvan was examined as R.W.1 and no documents were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that due to sudden crossing of a Cow on the road, the deceased lost control of the Tractor bearing Regn.No.TN 43 D 2634 applied sudden brake and fell into a 30 feet pit and the accident occurred during the course of employment and further held that the deceased being the employee of the 6th respondent, he has been covered by the insurance policy and for the death of the deceased, the claimants are entitled to receive the compensation under the Employee's Compensation Act and directed the appellant/Insurance Company to pay a sum of Rs.11,35,522/- as compensation.

7. Challenging the said award dated 14.08.2019 made in M.C.O.P.No.121 of 2018 fastening liability on the appellant-Insurance



Company as well as quantum of compensation awarded to the claimants, the appellant-Insurance Company has come out with the present appeal.

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8. Heard the learned counsel appearing for the appellant-Insurance Company as well as respondents 1 to 6 and perused the entire materials on record.

9. From the materials available on record, it is seen that the first respondent examined herself as P.W.1 and one Muthulingam, eye-witness examined himself as P.W.2. Both P.W.1 and P.W.2 have stated that the deceased was driving the tractor and the accident occurred due to sudden crossing of a Cow in the road and hence the deceased applied sudden brake and thereby the accident had occurred. There is no evidence to show that the Tractor was used for commercial purposes and it is used only for transporting tea leaves. The Tribunal, considering the above facts, rightly held that the appellant-Insurance Company is liable to pay the compensation to the respondents 1 to 5/claimants.

10. As far as quantum of compensation is concerned, the respondents/claimants 1 to 5 in the claim petition have contended that the



deceased was aged 50 years and was a driver, earning a sum of Rs.15,000/- per month. However, as per the Workmen's Compensation Act, the Tribunal

by relying upon the dictum of ruling reported in [2014 (2) TNMAC 161 (SC)]

in the case of *Manju Sarkar and others Vs Mabish Miah and others*

wherein it has been held in para 12 according to Section 4 of the Employee's

Compensation Act the deceased salary should be calculated and the Tribunal,

taking the age of the deceased as 50 and adopting the factor 149.67 and by

relying upon the Division Bench judgment of this Court in the case of

Jebastin Punitha and others Vs S.Selvaraj and another reported in [2019

(1) TNMAC 257 (DB)] fixed the notional income of the Heavy Vehicles

driver at Rs.15,000/-, The monthly income fixed by the Tribunal is not

excessive, since the same is the actual salary received by the deceased. The

Tribunal considering the entire materials on record has awarded a sum of

Rs.11,35,522/- as compensation to the respondents 1 to 5/claimants, which is

a just compensation. There is no error in the award passed by the Tribunal

warranting interference by this Court.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.11,35,522/- awarded by the Tribunal as compensation to the respondents/claimants 1 to 5, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount



together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.121 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also closed.

02.02.2024

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Index : Yes / No

Internet : Yes / No

K. RAJASEKAR, J.

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To



C.M.A.No.2794 of 20



1.The Motor Accidents Claims Tribunal,
Subordinate Court, Sathyamangalam.

2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.2794 of 2021

02.02.2024