IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.280 of 2021
and
Cross Objection No.37 of 2021
and
C.M.P. No.1864 of 2021

United India Insurance Co. Ltd.,
No.2, Dr. Sankaran Road,
Namakkal Town and District. .... Appellant in
C.M.A. No.280 of 2021 /
1st Respondent in
Cross Objection No.37 of 2021

vs.

K. Loganathan (Died)
1. L. Mani
2. L. SathishKumar
3. L. Ramachandran
4. L. Hemalatha .... Respondents 1 to 4 in
C.M.A. No.280 of 2021 /
Cross Objectors in
Cross Objection No.37 of 2021
5. V.P. Prezath ..... 5th respondent in
C.M.A. No.280 of 2021 /
2nd respondent in
Cross Objection No.37 of 2021

Prayer in C.M.A. No.280 of 2021: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P. No.1335 of 2013 on 09.03.2020 on the file of the learned Motor Accident Claims Tribunal Additional District Judge (FAC), Namakkal and be pleased to dismiss the above claim and allow the CMA.

Prayer in Cross Objection No.37 of 2021: Cross Objection filed under Order 41 Rule 22 of C.P.C. to enhance the award amount in the decree and judgment made in M.C.O.P. No.1335 of 2013 on the file of MACT/Additional District Court (FAC) at Namakkal, dated 09.03.2020 by allowing this cross objection with interest and cost.

For Appellant in C.M.A. No.280 of 2021 / Respondent in Cross Objection No.37 of 2021	:	Mr.J. Chandran
For Respondents in C.M.A. No.280 of 2021 / Cross Objectors in Cross Objection No.37 of 2021	:	Mr.Ma.Pa.Thangavel for R1, R2 & R4 R3 – Died – vide Memo SR 4872, dt. 8.2.2024 R5 – No appearance

COMMON JUDGMENT

C.M.A. No.280 of 2021 has been filed by the Insurance Company challenging the impugned award on the ground that the appellant / Insurance Company is not liable to pay the compensation, since the insurance policy does not give coverage to a Salesman, who is the accident victim and was travelling in the insured vehicle.

2. The respondents / claimants in C.M.A. No.280 of 2021, who are the Cross Objectors have filed Cross objection viz., Cross Objection No.37 of 2021 seeking for enhancement of compensation.

3. Heard Mr.J. Chandran, learned counsel for the appellant / Insurance Company and Mr.Ma.Pa.Thangavel, learned counsel for the respondents / claimants / cross objectors.

4. The contention of the appellant / Insurance Company is that the deceased K.Loganathan was a Salesman and he was not an employee of the insured viz., 5th respondent. According to them, the insurance policy gives coverage only to the employees of the 5th respondent and not to a Salesman employed by a different concern.

5. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the insurance policy, which has been marked as an Ex.R2 before the Tribunal and would submit that the policy gives coverage only for six employees and since K.Loganathan, who had

travelled in the insured vehicle was only a Sales man and not an employee of the 5th respondent and hence, the appellant / Insurance Company is not liable to pay compensation as determined by the Tribunal under the impugned award. According to him, despite a categorical stand having been taken by the appellant / Insurance Company questioning its liability to pay the compensation, the Tribunal has erroneously directed the appellant / Insurance Company to pay the compensation to the respondents / claimants.

6. The learned counsel for the appellant / Insurance Company also drew the attention of this Court to the following authorities in support of his contention that since K.Loganathan is a gratuitous passenger and no additional premium has been paid by the insured for non fare paying passengers, the Tribunal, ought not to have directed the appellant / Insurance Company to pay the compensation to the respondents / claimants :

a) A Division Bench judgment of the Madras High Court dated 24.10.2018 passed in CM.A. Nos.1529 to 1533 of 2015 in the case of ***Bharati Axa General Insurance Co. Ltd. vs. Aandi and two others, reported in 2018 (2) TNMAC 731 DB*** and

b) A Division Bench judgment of the Madras High Court dated 30.01.2004 passed in C.M.A. No.456 of 1997 in the case ***Kalavathay vs. Annamalai and others reported in 2004 ACJ 1573***.

7. On the contrary, the learned counsel for the respondents / claimants/ cross objectors would contend that the insurance policy gives coverage for six employees and it does not specify that only coolies / labourers, who travelled in the vehicle, are alone given coverage and therefore, K.Loganathan(deceased), even though working with a different concern is entitled to claim compensation, since the vehicle was used by that concern for transportation of eggs. He would also contend that the vehicle was carrying only three persons, which includes K.Loganathan at the time of the accident and hence according to him, the Tribunal has rightly awarded compensation and has rightly directed the appellant / Insurance Company to pay the said compensation to the respondents / claimants.

8. As seen from the insurance policy which has been marked as Ex.R2 before the Tribunal, the insurance policy gives coverage for six

employees. Though the learned counsel for the appellant / Insurance Company may contend that K.Loganathan (deceased) is not an employee since he is a Salesman, the said contention has to be rejected for the following reasons :-

a) The insurance policy does not specify that the coverage is given only to labourers / coolies/ load man as it specifies only "employees".

b) Admittedly, the deceased K.Loganathan is a Salesman, who had accompanied the goods viz., Eggs for its transportation by using the vehicle belonging to the 5^{th} respondent. He is also a third party and he is entitled to make a claim.

c) Being a welfare legislation seeking to protect the interests of the accident victims, the benefit of doubt should always be given to the accident victims, who seek compensation for the injuries sustained by them as a result of an accident or their dependants, who seek compensation for the death of the accident victim.

d) the decisions relied upon by the learned counsel for the appellant / Insurance Company has no bearing for the facts of the instant case as in those decisions, the evidence placed on record would make it clear that the said accident victim was a gratuitous passenger but in the case on hand it is not so.

9. Admittedly, the insured vehicle carried only three persons, which includes, the Driver, PW2 and the accident victim K.Loganathan. The vehicle can carry six persons apart from the Driver. There is no excess passengers travelling in the insured vehicle. The insurance policy also makes it clear that it gives coverage for six employees though the appellant / Insurance Company may contend that the accident victim viz., K.Loganathan is a non-fare paying passenger and since no additional premium was paid, they are not liable to pay compensation. The said contention has to be rejected. Since the insurance policy makes it clear that it gives coverage for six employees and the accident victim K.Loganathan, who is a third party is entitled to make a claim.

10. For the foregoing reasons, the contention of the appellant / Insurance Company that they are not liable to pay the compensation to the respondents / claimants, since K.Loganathan according to them is not an employee of the insured, is rejected by this Court.

11. The respondents / claimants have also filed a Cross Objection in Cross Objection No.37 of 2021 in this appeal seeking for enhancement of compensation on the ground that the notional monthly income fixed by the Tribunal under the impugned award at Rs.7,500/- is too low. The accident happened in the year 2013. Even though K.Loganathan claims to be a Salesman, no documentary evidence was produced before the Tribunal to prove his monthly income. The employer of K.Loganathan was also not examined as a witness before the Tribunal. For an accident that has happened in the year 2013, the fixation of notional monthly income at Rs.7,500/- is a correct assessment, which does not call for any interference by this Court.

12. The Tribunal has also awarded a just compensation of Rs.15,19,340/- as detailed hereunder, which is based on preponderance of probability and is based only on the evidence available on record.

Heads	***Amount awarded by the Tribunal (Rs.)***
Loss of income 7500 x 12 x 14	12,60,000
Loss of estate	15,000
Funeral expenses	15,000
Loss of consortium	40,000
Medical Bills	1,84,340

Heads	*Amount awarded by the Tribunal (Rs.)*
Transportation	5,000
Total	**15,19,340**

13. For the foregoing reasons there is no scope for enhancement of the compensation amount as claimed by the respondents / claimants / cross objectors in their cross objection.

14. In the result, C.M.A. No.280 of 2021 as well as the Cross Objection No.37 of 2021 does not deserve any merit and both are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. A Memo has also been filed by the respondents / claimants stating that the 3rd respondent viz., L.Ramachandran is dead and the 1st respondent L.Mani, who is his mother is his only legal heir. The Legal Heirship Certificate has also been enclosed along with the Memo. Accordingly, L.Mani is brought on record as the Legal Representative of the deceased L.Ramachandran.

16. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.1335 of 2013 on the file of the Motor Accident Claims Tribunal Additional District Judge (FAC), Namakkal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents / claimants / cross objectors as per the same ratio of apportionment made by the Tribunal, through RTGS , within a period of two weeks thereafter.

25.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order

<u>Note :-</u> Registry is directed to carry out the amendment and thereafter issue the order copy to the respective counsels.

vsi2

ABDUL QUDDHOSE, J.

vsi2

To
1. The Additional District Judge
Motor Accident Claims Tribunal
(FAC), Namakkal.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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