IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.3485 of 2021
and
C.M.P.No.20139 of 2021

The Manager,
HDFC ERGO General Insurance Company Ltd.,
New No.528, Old No.559, 2nd Floor,
Anna Salai, Teynampet,
Chennai. ... Appellant

vs.

1.Sumathi
2.Suguna
3.Karthik
4.Viruthambal
5.Pushpavalli
6.R.Manikandan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order dated 17.02.2020 made in M.C.O.P.No.378 of 2019 (on the file of the M.A.C.T. Cum II – Additional District and Sessions Court, Chidambaram).

For Appellant : Mr.N.Somasundaar
For Respondents :
For R1 to R5 : Mrs.T.Gopinath [R1 to R5]
For R6 : No Appearance [Notice Served]

JUDGMENT

Being aggrieved by the judgment and decree passed in M.C.O.P.No.378 of 2019 dated 17.12.2020 on the file of Motor Accident Claims Tribunal, Chidambaram (II-Additional District and Sessions Court, Chidambaram). The Insurance Company has preferred this Civil Miscellaneous Appeal as regards the liability issue.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for an amount of Rs.2,00,000/- for the death of one Paramasivam, due to the accident that occurred on 20.11.2014.

3. The Tribunal after evaluating the evidence has granted compensation of Rs.17,93,750/- with interest at the rate of the 7.5% per annum from the date of filing of the petition, holding that the 3rd respondent/Insurance Company is liable to pay the compensation.

4. The learned counsel for the appellant Mr.N.Somasundaar would strenuously argue that the deceased Paramasivam travelled on the mudguard of Tractor at the time of accident. The seating capacity in the

Tractor is one person, therefore, the deceased person is an unauthorized passenger. The Insurance Company ought to have been exonerated from any liability, making the Owner/Insurer liable to pay the compensation amount. The deceased cannot be considered as a third party within the meaning of the Motor Vehicles Act or as cleaner of the vehicle to saddle the statutory liability on the Insurance Company. He drew the attention of this Court by referring to Rule 28 of the Road Regulations, 1989, wherein, a driver when driving a Tractor shall not carry or allow any person to be carried on Tractor. The seating capacity of the Tractor is one and if any person other than driver is travelled on the Tractor, meets with death or injury claim, then the owner is liable to pay compensation**.**

5. To buttress his arguments, he referred to the following decisions:

(1) The judgment rendered in National Insurance Company Ltd. Vs. V.Chinnamma and Ors. [2004 (2) TN MAC 123 (SC)] was referred, in order to contend that the deceased who was a vegetable vendor; purchased the vegetables, loaded the same in Trailer and transported for the purpose of sale. He was travelling therein. Because of heavy jerks, the deceased fell down and succumbed to the injury. The Hon'ble Supreme Court held that the Trailer attached to the Tractor necessarily is

required to be used for agricultural purposes unless registered otherwise. The deceased who was transporting the vegetables for the purpose of sale. Therefore, the Tractor and the Trailer were not being used for agricultural purposes. Following the law laid down in Asha Rani case, as the accident taken place on 24.11.1991 i.e. much prior to the 1994 amendment, allowed the appeal filed by the Insurance Company and holding that the Insurance Company is not liable to pay compensation.

(2) The judgment in National Insurance Company Co. Ltd. Vs. Benit Rose and others [2008 (2) TN MAC 541] was referred to, in order to contend that if the claimant travelled in the Tractor as passenger and the Insurance Company Policy not covering any passenger risk, then the insurer is not liable to pay compensation.

(3) Shivawwa and another Vs. Branch Manager, National India Insurance Company Ltd. [2018 (1) TN MAC 435 (SC)] was referred to, in order to contend that when the deceased travelled in the Tractor after unloading the goods and due to the rash and negligent act of the driver of the Tractor which had caused accident, resulting in the death of Chanabasayya on the spot and held that the insurer would be obliged to satisfy the compensation amount awarded to the claimants.

(4) The judgment rendered in C.Pinniammal Vs. Jakkammal [2017 (1) TN MAC 662] was referred in order to contend that the deceased

travelled sitting on the mudguard of Tractor as coolie for the purpose of loading/unloading the agricultural produce. For the death of one Gurusamy in the accident, when he was travelling by sitting in the mudguard of the Tractor holding that it is violation of policy conditions and the Insurance Company was exonerated from the liability.

6. Whereas, the learned counsel for the respondents Mr.T.Gopinath vehemently would contend that the policy is a comprehensive policy and the deceased travelled as cleaner and for the cleaner, an additional premium was collected by the Insurance Company. Therefore, the Insurance Company is liable to pay compensation.

7. At trial, wife of the deceased Paramasivam, Smt.Sumathi and one Venkatesan have been examined as P.W.1 and Ex.P1 to Ex.P10 were marked. On the side of the second respondent R.W.1 and R.W.2 were examined. Ex.R1 and Ex.R2 were marked. Copy of the Insurance Policy is Ex.R1/Ex.P.9.

8. It is the evidence of ocular witness P.W.2 – Venkatesan that on 20.11.2014 at about 12.30 hours, cleaner Paramasivam was sitting and travelling on the left side of the mudguard and due to the rash and

negligent driving of the driver of the Tractor as he applied sudden break, deceased Paramasivam was thrown out and he was run over by the Tractor and died on the way to the Hospital.

9. The learned counsel for the appellant/2nd respondent stoutly contended that only person, namely the driver is permitted to travel in the Tractor and the deceased while he was setting on the mudguard of the Tractor died of the injuries. Hence, the Insurance Company is not liable to pay compensation to the unauthorized passenger, deceased Paramasivam.

10. It is evident that the deceased was sitting and travelling on the mudguard of the Tractor at the time of accident. In order to decide the liability of the insurer, the terms of the policy has to be looked into. The Insurance Policy is Ex.P9/Ex.R1. Ex.R1 is a comprehensive policy. For basic, third party liability Rs.1,458/- was collected. Personal accident cover for owner driver (limited liability amount of Rs.100/-) was paid under the head of limited liability to paid driver/conductor/Cleaner (IMT-28) Rs.50/- was collected.

11. It is the evidence of P.W.2 that the deceased was working as Cleaner/Driver and in that capacity, he travelled in the Tractor sitting on the left side of the Tractor. No doubt, the Insurance Company is bound by the terms of the Policy. For the paid driver/conductor/owner, as per IMT-28, an amount of Rs.50/- was paid by the owner of the conductor. When the owner is covered under the policy, then it should not lie in the mouth of the Insurance Company that it is not liable to pay compensation to the legal heirs of deceased Paramasivam. As the deceased travelled as a cleaner, and the cleaner is covered under the policy and an amount of Rs.50/- is paid as mentioned supra. Then the Insurance Company has to be made liable to pay compensation. The Tribunal has discussed about the liability and premium details in Para No.11. No doubt, seating capacity of the Tractor is one. Consciously, the Insurance Company having collected premium for the Cleaner/Conductor cannot turn around and deny the liability. Therefore, in this case, as per the terms of Policy, the premium is collected specifically for the cleaner/conductor for the death of Paramasivam, who travelled in the capacity of cleaner. Then the Insurance Company is liable to pay compensation and the Tribunal has rightly fastened liability on the Insurance Company cannot be found fault with.

12. Based on the aforesaid submissions, this Civil Miscellaneous Appeal is dismissed. In the result, the judgment and decree passed in M.C.O.P.No.378 of 2019 dated 17.02.2020 stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2024

Index : Yes/No
Speaking / Non-speaking order
mac

To:

1. The Motor Accident Claims Tribunal, Chidambaram

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

R.KALAIMATHI, J.,

mac

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