



C.M.A.(MD) No.1098 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1098 of 2010

and

M.P.(MD) No.1 of 2010

United India Insurance Co. Ltd.,
Through its Branch Manager,
Seethalakshmi Complex,
Tirumangalam, Madurai Main Road,
Tirunagar, Madurai-625 006.

... Appellant

Vs.

1.A.Malar
W/o.Arumugam

2.Minor A.Sathiyaseela
D/o.Arumugam

3.Minor A.Nidhyaseela @ Selvi
D/o.Arumugam

4.Minor A.Vidhiyaseela
D/o.Arumugam

5.K.Chinnaiah
S/o.Kuduthangi

6.V.Sivanathan Karuppan Chetti
S/o.Veeran Chetai

... Respondents

(Minor second to fourth respondents represented through
their mother and next friend, the first respondent)



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Prayer:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the order dated 06.06.2007 passed in W.C.No.106 of 2005 on the file of the learned Commissioner for Workmen's Compensation, Madurai.

For Appellant : M/s.Sasiprabha
for Mr.G.Prabhu Rajadurai

For R1 to R5 : Mr.S.Srinivasaraghavan

For R6 : Mr.K.Ayyanar

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the compensation awarded by the Commissioner for Workmen's Compensation, Madurai, to the first to fifth respondents/claimants.

2. The first to fifth respondents filed a claim petition before the Commissioner for Workmen's Compensation, Madurai, stating that on 18.02.2005, when the deceased was travelling as a loadman in the Tractor bearing Registration No.TN-59-Q-2745 belonging to the sixth respondent herein, the driver drove the Tractor in a rash and negligent manner and



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applied a break suddenly, as a result of which the deceased was thrown out of the Tractor and sustained fatal injuries.

3. The sixth respondent remained *ex parte* before the Commissioner. The appellant, Insurance Company, filed a counter before the Commissioner, stating that the deceased was an unauthorized passenger and that the insurance policy does not cover the claim made by such an unauthorized passenger, and prayed for dismissal of the claim petition.

4. Before the Commissioner, the first to fifth respondents/claimants examined P.W.1 and marked Exs.A1 to A7. The appellant, Insurance Company, examined two witnesses and marked three documents on their side.

5. The Commissioner, after taking into consideration the oral and documentary evidence, held that the first to fifth respondents/claimants had established that the deceased was employed under the sixth respondent and therefore, the sixth respondent was liable to pay compensation; and that the appellant, being the insurer, is liable to



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indemnify the sixth respondent, the owner of the tractor, for the award amount of Rs.3,61,989/-.

6. M/s.Sasiprabha, the learned counsel for the appellant, Insurance Company, seriously contended that the finding of the Commissioner holding that the appellant is liable to indemnify the sixth respondent is not in accordance with law and is contrary to the terms of the contract of insurance; and that since the deceased was an unauthorized passenger who was allowed by its employer to travel unauthorizely on the mudguard, the appellant is not liable to indemnify the owner.

7. The learned counsel for the appellant, Insurance Company, also submitted that since the first to fifth respondents/claimants are under the Workmen's Compensation Act, 1923, the question of pay and recover does not arise and relied on the decision of the Hon'ble Supreme Court in the case of **Beli Ram Vs. Rajinder Kumar and another**, reported in (2022) 15 SCC 572.

8. Mr.S.Srinivasaraghavan, the learned counsel for the first to fifth respondents/claimants, per contra, submitted that the deceased was



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working as a loadman under the sixth respondent, and even assuming that there is a violation of terms of the contract of insurance, the appellant would be liable to pay and recover the compensation from the sixth respondent, and hence, the award of compensation cannot thus be modified to that extent.

9. The learned counsel for the first to fifth respondents/claimants relied on the decision of the Hon'ble Supreme Court, in the case of **Shivaraj Vs. Rajendra and another**, reported in 2018 (2) TN MAC 273 (SC), the decision of the Hon'ble Supreme Court, in the case of **V.Renganathan and another Vs. Branch Manager, United India Insurance Co. Ltd. and another**, reported in 2023 ACJ 623, and the decision of this Court, in the case of **Arumugam Vs. K.Arumugam and another**, dated 27.06.2023 passed in C.M.A.(MD) No.1292 of 2016.

10. The instant appeal was admitted on the following questions of law:

- i. Whether the Commissioner is correct in law in holding that a load man travelling in a tractor in a way not authorized by law is to be covered by the policy of insurance?



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- ii. Whether the Commissioner is correct in law in overlooking the provisions of section 3(1)(b)(ii) of the Workmen Compensation Act, 1923 which denies the compensation to a person who willfully disobey the safety rules?

11. Admittedly, the deceased was working as a loadman in the tractor owned by the sixth respondent, as the appellant, Insurance Company, has not seriously disputed that fact. It is also an admitted fact that the terms of the contract of insurance do not provide for any person to travel sitting in the mudguard of the tractor. As per the terms of policy, only the driver is permitted to travel in the tractor. Therefore, there cannot be any dispute with the fact that the deceased was an unauthorized passenger in the tractor and that the owner of the tract has violated the terms of contract.

12. The only question that remains is whether the appellant should be directed to pay the compensation at the first instance and thereafter recover from the sixth respondent.



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13. In the **Beli Ram** case relied on by the learned counsel for the appellant, Insurance Company, the Hon'ble Supreme Court held that the driver/injured claimant was a tortfeasor who had violated the policy conditions by driving the vehicle without a valid driving licence and, in such circumstances, directed the owner of the vehicle to pay compensation for being negligent in allowing the driver to drive the vehicle without a valid licence for about 3 years.

14. On the other hand, in the **Shivaraj** case relied on by the learned counsel for the first to fifth respondents/claimants, in identical circumstances, where the claimants were legal representatives of a passenger who travelled in a Tractor in breach of policy conditions, the Hon'ble Supreme Court held that the Insurance Company was not liable to indemnify the owner to pay compensation, but, at the same time, directed the Insurance Company to pay the compensation with liberty to recover the same from the owner in view of the consistent view taken in that regard by earlier decisions of the Hon'ble Supreme Court including the decision in the case of **National Insurance Company Limited Vs. Swaran Singh and others**, reported in 2004 (3) SCC 297.



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WEB COPY 15. The very same view was reiterated by the Hon'ble Supreme Court in the **V.Renganathan** case referred to *supra* and this Court in the **Arumugam** case referred to *supra*.

16. In view of the above, this Court is of the view that, in view of the view taken by the Hon'ble Supreme Court in matters of this nature, it would be just and reasonable to exonerate the appellant, Insurance Company, with direction to it to pay the compensation and recover the same from the sixth respondent in accordance with law.

17. It is reported by the learned counsel for the appellant, Insurance Company, that the appellant had already deposited the entire compensation amount.

18. It is reported that the fifth respondent, the father of the deceased, is no more. In the facts and circumstances of this case, this Court is of the view that since the wife and children of the deceased are also claimants, the legal heirs of the fifth respondent, the father of the deceased, need not be awarded any compensation. The first to fourth



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respondents/claimants, including the minor claimants, who would have now attained majority, are permitted to withdraw the compensation equally along with accrued interest.

19. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

27.08.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Commissioner for Workmen's Compensation,
Madurai, Madurai District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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