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C.M.A.(MD)No.1412 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1412 of 2012

The Branch Manager
Oriental Insurance Company Limited
DoorNo. 555/1
G.K.Road, Theni
Theni District

... Appellant/ Respondent No.3

Vs.

1.Masillal
2.Minor.Antony
3.Minor.Pradheesh vinu
4.Minor. John Benno
5.Kitheriyan

(2 to4 minor respondents represented through
mother and natural guardian first respondent)

..Respondents 1 to5/
Petitioners 1 to 5

6. Mariappan

..Respondent No.6/Respondent No.1

7. D.Manoharan

..Respondent No.7/Respondent No.2

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order of the Motor Accident Claims Tribunal/Sub Court, Padmanabhapuram made in M.C.O.P.No.137 of 2007 dated 20.02.2012.

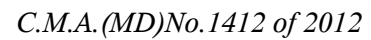
For Appellant : Mr.C.Jawahar Ravindran

For R1,2 and 4 : Mr.C.R.Nirmal

For R3 : Mr.Sudagar Nagaraj

For R5 : Mr.Ramakrishna dass

For R6and 7 : Given up



This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.137 of 2007 on the file of the Motor Accidents Claims Tribunal/ Sub Court Padmanapuaram Wherein the respondents 1 to5 herein have filed claim petition as against the respondents 6 and 7 and the appellant/herein

2. The Tribunal has awarded a sum of Rs.5,87,500/- towards compensation to the petitioners. As against the award passed by the Tribunal the appellant /third respondent/ Insurance company has filed this present Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the case before the trial Court are as follows:

On 01.04.2006 the driver of the tractor bearing Reg.No.TN 63 A 5011 belongs to the first respondent insured with the third respondent was engaged for loading material for carrying out the agricultural work. The deceased Philip was sitting on the seat near to the driver, at that time the driver of the tractor



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had driven the vehicle in a rash and negligent manner and thereby the said Philip thrown out from the tractor and sustained grievous injuries and died. The petitioners and fifth respondents are the legal heirs of the deceased. The accident took place due to negligence of the driver of the tractor hence they filed this application.

5. The brief averments of the counter filed by the third respondent are as follows:

The averments made in the petition are all denied as false. The petitioners are put to strict proof of age, occupation, income and the injuries sustained by the deceased. This respondent denies the manner of accident and the negligence on the part of the driver of tractor. The deceased travelled in the tractor was not used for agricultural purpose at the time of accident and also the deceased travelled as gratuitous passenger. The driver of the tractor has no valid license to drive the vehicle and thereby the third respondent is not liable to pay any compensation to the petitioner

6. In order to prove the case of the petitioners they have examined P.W.1 and marked documents Exps.P.1 to P.6 On the side of the respondents R.W.1 to R.W. 3 were examined and Exhibits Exs.R.1 and R2 were marked.



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7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.5,87,500/- towards compensation and directed the third respondent to pay the amount to the petitioners. Aggrieved by the above said order the third respondent/ Insurance company has filed this appeal on various grounds.

8. The learned counsel appearing for the appellant would contend that the deceased was travelled in the tractor as unauthorized passenger and the tractor was not used for agricultural purpose. Moreover the driver of the first respondent has no valid license to drive the vehicle and thereby there is violation of condition of policy and therefore the third respondent/appellant is not liable to pay any compensation to the petitioners. The tribunal has failed to consider the above said aspects and directed the third respondent to pay the compensation to the petitioner, therefore the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the respondent would contend that on the date of accident the deceased was working as load man in the tractor which was used for agricultural purpose and the tractor was insured with the third respondent on the date of accident. As far as the petitioners are concerned they are third parties to the insurance company, thereby the



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appellant/third respondent is liable to pay compensation to the petitioners. The Tribunal after taking into consideration all the aspects has correctly awarded fair compensation directing the appellant/third respondent to pay the compensation amount.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

11. In this case there is no dispute with regard to the negligence on the part of the driver of the first respondent. The main contention of the appellant is that the tractor was not used for agricultural purpose and the deceased was travelled as an unauthorized passenger in the tractor and thereby there is violation of condition of policy. The Tribunal after analyzing evidence adduced on either side fixed the negligence on the part of the driver of the tractor and also directed the appellant/third respondent insurance company to pay the award amount. In this case there is no dispute with regard to the quantum of amount and the insurance company has filed this appeal only on the ground of liability. Before the Tribunal the driver of the vehicle and owner of the vehicle were set exparte., In the appeal also the appellant has given up the case as against the sixth respondent/driver of the vehicle and the seventh



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respondent/owner of the vehicle. Without the presence of the owner of the vehicle the claim against owner cannot be decided. Though the owner of the vehicle was set exparte before the Tribunal, once they made as party in the appeal it is the duty of the appellant to serve notice on the respondent but unfortunately the respondent 6 and 7 were given up. Since the vehicle of the 7th respondent was insured with the appellant company, as far as petitioners are concerned they are 3rd parties to the insurance company, therefore in the absence of owner of the vehicle this appeal cannot be decided effectively. Therefore this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

12. In the result, the Civil Miscellaneous Appeal stands dismissed and the order of the Sub Court, Padmanabhapuram/ Motor Accident Claims Tribunal made in M.C.O.P.No.137 of 2007 dated 20.02.2012 is hereby confirmed. The Appellant/Insurance Company is hereby directed to deposit the compensation as awarded by the Tribunal along with interest within a period of two months from the date of receipt of copy of this order.

22.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal,
Sub Court, Padmanabhapuram
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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