BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.926 to 930 of 2012
and
C.M.P(MD)Nos. 8605, 8606, 8608, 8593 & 8596 of 2024

C.M.A(MD)No.926 of 2012

The Manager,
The Oriental Insurance Company Limited,
555/1, Government Hospital Road,
Theni. ... Appellant

Vs.

1. C.Selvam
2. V.Pandari
3. T.Pothumani
4. G. Ellappa Nayakkar (Died) ... Respondents

[The respondents 2 to 4 remained exparte before the Tribunal]

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, to set aside the Award of Rs.8,921/- [Rupees Eight Thousand Nine Hundred and Twenty One Only] passed in W.C.No.356 of 2005, dated 30.03.2012, on the file of the Commissioner for Workmen's Compensation (Commissioner of Labour), Dindigul.

For Appellant	:	Mr.C.Jawahar Ravindran
R-1 to R-3	:	No appearance
R-4	:	Died

COMMON JUDGEMENT

These Civil Miscellaneous Appeals are filed by the Insurance Company to set aside the Award, dated 30.03.2012, passed by the Commissioner for Workmen's Compensation (Commissioner of Labour), Dindigul.

2. The claimants in all the Civil Miscellaneous Appeals are arrayed as 1st respondent and the 2 to 4 respondents are arrayed as respondents 1 to 3 herein and the 4th respondent Insurance company is the Appellant herein. For the sake of convenience, the parties are referred as claimants and respondents.

3. It is a case of injury. The five claimants have preferred separate claim petitions before the Labour Court for compensation.

4. The accident happened when the said five persons were travelling in a Tractor cum Trailer. The 1st respondent has purchased the Tractor from the 2nd respondent to use the same for doing agricultural activities and thereafter, he had purchased the Trailer from the 3rd respondent. The 2nd respondent has entered appearance and filed counter stating that he had already sold the Tractor to the 1st respondent. And the 1st and 3rd respondents remained exparte.

5. The Tractor was not insured, but the Trailer was insured. Hence, the contention of the Insurance Company is that when the Tractor was not the Insurance Company is not liable to pay compensation.

6. On perusing the Insurance policy it is seen that the policy is a comprehensive policy, wherein it is clearly stated that the vehicle can be used for carrying the goods and in the vehicle cannot be used for passengers, except the employees / coolies. And the number of employees / coolies shall not exceed the permitted numbers in the registration documents. On perusing the registration documents, it is seen that number of employees / coolies were not indicated. However, under Section 2(36) of the Motor Vehicles Act states 6 employees / coolies are permitted. Where ever the number of employees /

coolies were not mentioned, then the definition Clause can be relied on. Therefore, this Court by relying on the said section is of the considered opinion that 6 employees / collies are permitted in the Trailer. In the present case only 5 employees / coolies have travelled, which is within the permissible limit. However, the Tractor was not insured.

7. The issue of coolies travelling along with the goods is already considered by the Hon'ble Court in 2021(1) TN MAC 492, wherein it is held as under:

> *"17.In the present case, it is the case of the claimants/claimant that at the time of accident, the deceased persons and injured claimant were travelling as Coolies after loading the hollow bricks, to unload the same. The 2nd respondent has not produced any materials to show that at the time of accident, the Tata Ace goods vehicle was empty and deceased persons and injured claimant were not sitting on the hollow bricks. In the written submission, the learned counsel appearing for the 2nd respondent has mentioned that Rule 236 of the Tamil Nadu Motor Vehicles Rules prohibits the persons more than seating capacity be carried in the cabin. Rule 236 of the Tamil Nadu Motor Vehicles Rules reads as follows:*
>
> > *"236. Limit of persons in goods carriage— No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at*

the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."

18. In the judgment referred to above, this Court considered Rule 236 of the Tamil Nadu Motor Vehicles Rules and held that 6 persons can sit in the backside of the goods vehicle along with the goods.

19.In the judgment dated 09.10.2010 made in C.M.A.No.323 of 2011, relied on by the learned counsel appearing for the claimants, this Court again held that when Coolies travel along with goods to unload the goods, they travel as agent of owner and their risk is covered under Section 147 of the Motor Vehicles Act and hence, Insurance Company is liable to pay compensation.

20.The judgments relied on by the learned counsel appearing for the 2nd respondent do not advance their case as the facts of those case are entirely different to the facts of the present case.

21.The full Bench judgment of the Hon'ble Apex Court reported in 2004 (1) CTC 2010 (Bulchith Kaur's case), judgment of this Court reported in 2009 (1) CTC 1 (Nagammal's case) referred to above and the judgment dated 09.10.2010 made in C.M.A.No. 323 of 2011 referred to above, relied on by the learned counsel appearing for the claimants/claimant are squarely applicable to the facts of the present case. Further, the issue whether the Insurance Company is liable to pay compensation to the owner of the goods or their agent who travel on the backside of the goods *vehicle along with the goods is no longer res-integra. In the full Bench judgment of the Hon'ble Apex Court reported in 2004 (1) CTC 210 referred to above, judgment of this Court reported in 2014 (2) TNMAC 79 and the judgment dated 25.09.2014 made in C.M.A.No.2825 of 2010, it has been already decided that the Insurance Company is liable to pay compensation to the claimants as they are covered under Section 147 of the Motor Vehicles Act and Rule 236 of the Tamil Nadu Motor Vehicle Rules.*

22.When a policy is issued by the Insurance Company as per the provisions of Section 147 of the Motor Vehicles Act, it is statutory policy and also called as Act policy. The liability of the insurer under this policy is restricted to indemnify the insured in respect of the claim made by the 3rd parties and also owner of goods or their authorised representative who travel in the goods vehicle along with their goods. The Insurance Company is not liable to pay any other claim. At the same time, the owner of the vehicle can pay additional premium to cover the liability of its employees, workers like loadman, coolies, pillion rider in two wheeler, occupant of four wheeler, personal accident coverage for owner-cum-driver, etc. This policy is called package policy and also called contractual policy. The said Insurance Company is bound by terms of contract. In the present case, the policy issued by the 2nd respondent is package policy. R.W.1 in his evidence has admitted that the deceased persons and injured claimant travelled as Coolies. The Tribunal considering that the policy issued by the 2nd respondent is a package policy, held that 2nd respondent is liable to pay compensation. In the appeal, it is not the case of the 2nd respondent that risk of coolies is not covered by the said policy. On the other hand, it is the case of the 2nd respondent that *deceased persons and injured claimant travelled as unauthorized passengers, where there is no seating capacity. In the written statements, the 2nd respondent has stated that the deceased persons and injured claimant after loading the hollow bricks travelled on the top of the hollow bricks to unload the same. In view of the above materials, there is no error in the award of the Tribunal, holding that the 2nd respondent is liable to pay compensation."*

In the present case it is admitted that the claimants were travelling as coolies and they were engaged to pluck the coffee seeds. Therefore, the aforesaid judgment is applicable to the present case.

8. Therefore, based on the aforesaid factors and circumstances of the case, this court is fixing 40% liability on the owner of the vehicle and 60% on the Insurance Company.

9. Accordingly, these Civil Miscellaneous Appeals are allowed partly. The Appellant/Insurance Company is directed to pay 60% and the owner of the vehicle is directed to pay 40% of the Award, dated 30.03.2012, passed by the Commissioner for Workmen's Compensation (Commissioner of Labour), Dindigul, the same shall be deposited within a period of 8 weeks from the date of receipt of a copy of the order, less the amount if already deposited.

On such deposit being made, the claimants are permitted to withdraw the same.

No Costs. Consequently, connected miscellaneous petitions are closed.

29.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Commissioner for Workmen's Compensation,
   (Commissioner of Labour),
   Dindigul.

2. The Section Officer,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J.

KSA

Common Order made in
C.M.A(MD)Nos.926 to
930 of 2012

29.07.2024