BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:04/06/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.1184 of 2023
and
CMP(MD)No.15797 of 2023

The Manager,
National Insurance Company Ltd.,
Having its Office at D.No.12-A,
Convent Building,
Sub-Collector's Office Road,
Y.M.R.Patti,
Dindigul. : Appellant/2nd Respondent

Vs.

1.Maruthammal
2.Selvi
3.Indhurani : Respondents 1 to 3/ Petitioners 1 to 3

4.The Proprietor,
'Gayathiri Agencies (General Goods)
Running at D.No.H-27-67G,
R.M.Colony,
Dindigul. : 4th Respondent/ Respondent No.1

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Principal District Judge, Dindigul, in MCOP No. 314 of 2019, dated 18/11/2022 and pass such further orders.

For Appellant : Mr.D.Sivaraman

For R1 to R3 : Mr.R.Pugalendhi

For 4th Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking an order to set aside the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Dindigul, in MCOP No.314 of 2019, dated 18/11/2022.

2.**The facts in brief**:-

On 08/07/2018, the deceased Arumugam went to Kanavaipatti on the eve of the temple festival for cocking purpose. After completing his work along with the articles travelling in a Auto bearing registration No.TN-57-V-0666 to Dingigul on the east-west direction. At about 07.00 pm, the driver of the auto drove it in a rash and negligent manner and try to hit the water cart. He applied sudden brake. As a result of which, the loaded auto capsized. The deceased fell down and sustained injuries, taken to the Dindigul Government Hospital, later to the Rajaji Government Hospital, Madurai and died at about 11.10 pm.

3.A case was registered in Crime No.344 of 2018 against the driver of the Auto under sections 297, 337 and 304(A) IPC.

4.Seeking compensation amount, the dependents of the deceased filed the claim petition before the Motor Accident Claims Tribunal stating that the deceased Arumugam was earning Rs.15,000/- per month and died at the age of 50. Since the Insurance Company issued coverage policy, they are liable to pay the compensation amount of Rs.20,00,000/-.

5.That was resisted by the Appellant Insurance Company stating that the vehicle is a tricycle vehicle meant for carrying only goods and not the passengers. On the date of the occurrence, it carried un-authorised passengers. The deceased was not travelling along with the goods as the owner of the goods.

6.On the side of the claimants, 2 witnesses examined and 5 documents marked. On the side of the Insurance Company, one witness was examined and 3 documents marked.

7.At the conclusion of the enquiry process, regarding the negligence, the Tribunal found that the manner in which the occurrence took place indicates the rash and negligent driving on the part of the first respondent vehicle driver, since the water cart was hit beyond. This itself shows the rash and negligent on the part of the driver of the offending vehicle. So the manner in which the occurrence took place was taken into account by the Tribunal to come to the conclusion that it occurred due to rash and negligence on the part of the driver of the first respondent's vehicle. I find that no serious argument was raised on this aspect before this court.

8.Regarding the compensation amount also, I find that it was reasonably fixed. For the monthly income, there was no documentary evidence. But it was admitted by the Insurance Company that the deceased was doing Catering work. Considering the wage structure introduced by the Central Government and as approved by this court in Royal Sundaram Alliance Insurance Co., Ltd., Vs. Manimekalai and others (2014(2) TN MAC 481), the notional income was fixed at Rs.8,000/-, which cannot be construed to be excessive. Future prospectus was fixed at 30% considering the age of the deceased, which was also computed to be 50. To that, consortium and other customary amounts were added. Finally, it fixed a total compensation amount as Rs.11,61,600/-. So, those amounts were reasonably fixed by following certain procedures. So, no interference is called for.

9.A major portion of the argument is concentrated only on the question of liability.

10.The learned counsel appearing for the appellant would submit that the deceased was not an employee and is only the owner. Seating capacity of the tricycle vehicle is only 2. So, the deceased to be construed as a gratuitous passenger travelling in the goods vehicle, which is not permissible under law.

11.The finding of the Tribunal is that Ex.P5 Insurance Police indicates that seating capacity is 2 and additional premium was collected. But actual seating capacity is mentioned as one in Form 29. Without properly verifying and inspecting the seating capacity of the vehicle, it appears that excess premium amount has been collected. To whom, it was intended also that there was also some controversy, which we need not enter into the discussion. The deceased was travelling not inside the cabin, but in the goods portion.

12.The learned counsel appearing for the appellant would submit that if at all the deceased ought to have been travelling in the vehicle either in the cabin portion and certainly not in the goods portion, which is not permissible under law. When there is violation of the Motor Vehicles Act, the Insurance Company cannot be held liable. He would submit the following judgments on this aspect.

> *(1)National Insurance Co. Ltd., Vs. Anjana Shyam and others (2007(2) TN MAC 193(SC);*
>
> *(2)National Insurance Co. Limited Vs. Cholleti Bharatamma and others (2008(2) TN MAC 29(SC); and*
>
> *(3)Unreported judgment of this court made in CMA(MD)Nos.670 and 671 of 2019, dated 23/03/2023 (R.Nagarani and others Vs. Muthukrishnan and another).*

13.Here as per the reading of the FIR, it is seen that the deceased was travelling in the vehicle along with the goods. It is clearly mentioned in the complaint that after completing the work, the deceased loaded the articles and tin sheets in the loaded auto and travelled. So it is seen that he travelled in the vehicle along with the goods as owner of the goods. So, there can be no doubt that he did travel as owner along with the goods in the goods vehicle.

14.In the judgments cited by the appellant, there was no proof to show that the deceased was travelling in the vehicle along with goods. Here, as mentioned above, the earliest document in the form of FIR shows that the contention on the part of the appellant is not tenable.

15.Now we will see the Insurance Policy, which is marked as Ex.R1.

16.As observed by the Tribunal, it is seen that one person was covered for operation and maintenance. Rs. 50/- was collected as premium. But RW1 has stated that that premium amount of Rs.50/-is entitled only for driver and not any other person. But, as mentioned above, in the column, it has been specifically mentioned that number of workman for operation and maintenance is upto 6 + 1 travelling is shown and after that, it is mentioned as' one person'. To whom, it is intended is not clear on record. This has been taken into account by the Tribunal. At the time of issuing the policy, the Insurance Company ought to have been vigilant and clearly would have mentioned the intended persons. In an ambiguous manner, it has been mentioned the category of persons. When there is ambiguous statement not only by RW1, but in his document itself, I find that absolutely it is not established on the side of the appellant, it is not intended to cover the owner of the goods.

17.On the sole ground, I find no reason to differ from the view taken by the Tribunal.

18.In the result, this Civil Miscellaneous Appeal is **dismissed.** No costs. Consequently connected Miscellaneous Petition is closed.

04/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Dindigul.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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CMA(MD)No.1184 of 2023

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