BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2023

PRONOUNCED ON : 31.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.144 to 147 of 2018
and
C.M.P.(MD)Nos.2093 to 2096 of 2018

C.M.A.(MD)No.144 of 2018:-

1.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy.
2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy. ... Appellants

Vs.

1.Kalaiarasi
2.P.Irulapan
3.Subramanian ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of Motor Accident Claims Tribunal Cum Principal District Court, Tiruchirappalli made in M.C.O.P.No.769 of 2008 dated 28.04.2016.

For Appellant	: Mr.C.Jawahar Ravindran
For R1	: Mr.C.Padmaraj
For R2 & R3	: No Appearance

C.M.A.(MD)No.145 of 2018:-

1.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy.
2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy. ... Appellants

Vs.

1.Arokiam @ Arokiasamy
2.P.Irulapan
3.Subramanian ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of Motor Accident Claims Tribunal Cum Principal District Court, Tiruchirappalli made in M.C.O.P.No.770 of 2008 dated 28.04.2016.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.C.Padmaraj
For R2 & R3 : No Appearance

C.M.A.(MD)No.146 of 2018:-

1.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy.
2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy. ... Appellants

Vs.

1.Kannammal
2.Shanthi
3.Tamilselvan
4.Minor Sathiya
5.Minor Siva
(4 & 5 minor respondents
are represented by their mother
and natural guardian Mrs.Kannammal
W/o.Late. Thangaraj)
6.P.Irulapan
7.Subramanian ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of Motor Accident Claims Tribunal Cum Principal District Court, Tiruchirappalli made in M.C.O.P.No.771 of 2008 dated 28.04.2016.

For Appellant	: Mr.C.Jawahar Ravindran
For R1 to R5	: Mr.C.Padmaraj
For R6 & R7	: No Appearance

C.M.A.(MD)No.147 of 2018:-

1.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy.
2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.33, Promenade Road,
Contonment,
Trichy. ... Appellants

Vs.

1.Ramasamy
2.P.Irulapan
3.Subramanian ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of Motor Accident Claims Tribunal Cum Principal District Court, Tiruchirappalli made in M.C.O.P.No.772 of 2018 dated 28.04.2016.

For Appellant	: Mr.C.Jawahar Ravindran
For R1	: Mr.C.Padmaraj
For R2 & R3	: No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been directed as against the common judgment and award passed by the learned Motor Accident Claims Tribunal (Principal District Judge), at Tiruchirappalli in M.C.O.P.Nos.769 to 772 of 2008 dated 28.04.2016 by the appellants/respondents 2 and 4/insurance companies, challenging the liability fixed by the learned Tribunal.

2.For the sake of convenience, the parties herein are arrayed as per the rank of the respective M.C.O.Ps. before the learned Tribunal and C.M.A.(MD)No.144 of 2018 is taken as lead case.

3.The brief facts of the case in nutshell is as follows:-

On 29.07.2007 at about 02.30 p.m., a tractor bearing registration No.TN-60-B-8943 owned by the first respondent, which was attached with a trailer bearing registration No.TN-65-9042 owned by the third respondent, was driven by the driver of the tractor belonging to the first respondent from Alagumadai to Dharmathupatti, near Nayakkar Kadu bus stop. On the fateful day, the driver of the first respondent's tractor permitted one Thangaraj, Chinnathangam, Arokiam @ Arokiasamy, Ramasamy and few other colleagues to travel in the trailer attached to the tractor. When the tractor along with trailer came down from Alagumadai to Dharmathupatti, Alagumadai – Tharumattu Patti, near Nayakkar Kadu Bus stop, on its way, there was a hairpin bend No.12/3 and while passing along the said hairpin, the driver of the tractor trailer having driven the vehicle on a hectic speed in a rash and negligent manner dashed on a rock. Due to which, the iron hook of the trailer suddenly got broken and got detached from the tractor. As the result of which, without balance, the same got capsized. Due to the impact of the accident, the following persons sustained injuries:-

(i)One Chinnathangam sustained multiple grievous fatal injuries and as a result of which, she died on the way to the hospital.

(ii)One Arokiyam @ Arokiasamy sustained multiple injuries and fractures particularly in the right side of the ribs, right shoulder and blood clot in right side ribs and lacerated in all over the body. He was taken to Government Headquarters hospital, at Dindigul and was treated as in patient from the accident even after the date of petition.

(iii)One Thangaraj sustained multiple grievous fatal injuries and he was immediately taken to Government Hospital, Dindigul and thereafter, he was admitted at Meenakshi Mission Hospital, Madurai for further treatment and unfortunately on 25.11.2007, he passed away.

(iv)One Ramasamy sustained multiple grievous injuries and fractures particularly the left side hip, nasal bones and injuries in head and also lacerations in all over the body. He was immediately taken to Government Headquarters Hospital, Dindigul wherein he was admitted as in patient from 29.07.2007 to 05.08.2007.

4.The deceased Chinnathangam aged 38 years was survived by her daughter one Kalaiarasi and has sought for a compensation for the death of her mother, by filing a claim petition in M.C.O.P.No.769 of 2008. The injured Arokiam @ Arokiasamy has sought for a compensation for the injuries sustained by him had filed M.C.O.P.No.770 of 2008. Likewise, the deceased Thangaraj was survived by his wife Kannammal and one daughter and three sons of which two sons were minors. The legal heirs of the deceased Thangaraj has sought for a compensation for the death of said Thangaraj had filed M.C.O.P.No.771 of 2008. Similarly the injured Ramasamy has sought for a compensation for the injuries sustained by him had filed M.C.O.P.No.77 of 2008.

5.Refuting all the allegations put forth in the claim petitions in all the four M.C.O.Ps., the second respondent had filed counters in all the M.C.O.Ps., and the same was adopted by the fourth respondent.

6.The Tribunal has framed six issues. Five witnesses P.W.1 to P.W. 5 were examined on the side of the petitioners and Ex.P1 to Ex.P14 were marked. One witness was examined and Ex.R1 to Ex.R3 were marked on the side of the respondents. That apart, the post morterm certificate of deceased Chinnathangam was marked as Ex.X1. After considering the oral and documentary evidence and arguments submitted by all the parties, the learned Tribunal concluded that at the time of accident, the respondents 1 and 3 have insured the vehicles with the respondents 2 and 4 and the insurance policies are in force. Hence, the respondents 1 to 4 are jointly and severely liable to pay the compensation to the petitioners.

7.As far as the claim petition in **M.C.O.P.No.769 of 2008** is concerned, at the time of accident, the deceased Chinnathangam was aged 38 years old and she was doing Coolie work. The learned Tribunal fixed the age of the deceased as 38 years on the basis of Ex.X1 post morterm report of the deceased Chinnathangam. Considering the fact that the deceased person was a Coolie who was earning Rs.150/- per day, the learned Tribunal fixed the monthly income as Rs.4,000/- per month and derived the annual income of the deceased at Rs.48,000/-. Thereafter, adopting proposition of the Hon'ble Apex Court in the case of ***Sarala Verma and others v. Delhi Transport Corporation and other*** reported in ***2009 (2) TNMAC 1***, the learned Tribunal after deducting ½th of income of the deceased towards personal expenses, fixed the ratio of family dependency at Rs.24,000/- and multiplier of ' 15' was adopted as per Schedule 2 of Section 163(A) of the Motor Vehicles Act, 1988 and calculated the head loss of income at Rs.3,60,000/- (Rs.24,000x15). Thereafter, the learned Tribunal proceeded to pass the award under the following heads:-

Head	**Compensation awarded**
(I)Loss of Dependency:	Rs.3,60,000/-
(ii)Loss of love and affection of petitioner:	Rs.10,000/-
(iii)Funeral expenses:	Rs.10,000/-
(iv)Transportation :	Rs.10,000/-

Total compensation awarded:	Rs.3,90,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

8.With respect to claim petition in **M.C.O.P.No.770 of 2008**, on the basis of Ex.P11 disability certificate and Ex.P10 CT scan of the said injured, the learned Tribunal fixed the petitioner's age as 50 years. Though the petitioner's claim to have suffered partial permanent disability and examined one Dr.Ravi as P.W.5 to prove his disability, the learned Tribunal on perusal of evidence of P.W.5 found that the petitioner sustained fracture injuries on right side neck and shoulder and had accepted 47% partial permanent disability as certified by the said Doctor. The Doctor had certified the petitioner to have sustained partial permanent disability at 47%. However, considering the fact as the result of periodical treatment his permanent and partial disability would be cured to certain extent, decided to fix the partial permanent disability at 40%. The learned Tribunal calculated Rs.2,000/- per percentage towards loss of income and a compensation of Rs.80,000/- was finalized under the head compensation for the loss of earning. The learned Tribunal proceeded to pass award under the following head:-

Head	Compensation awarded
(I)Loss of earning:	Rs.80,000/- (2,000x40%)
(ii)Pain and suffering:	Rs.20,000/-
(iii)Medical expenses:	Rs.10,000/-
(iv)Transportation :	Rs.10,000/-
(v)Extra Nourishment:	Rs.10,000/-
Total compensation awarded:	Rs.1,30,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

9.Thereafter, with respect to **M.C.O.P.No.771 of 2008**, the age of the deceased Thangaraj was fixed as 44 years on the basis of Ex.P2, wound certificate and Ex.P3 discharge certificate by the learned Tribunal. Though the petitioners in M.C.O.P.No.771 of 2008 had claimed a compensation of Rs.6,00,000/-, considering the fact that the deceased had been a coolie, the learned Tribunal fixed the monthly income of the deceased as Rs.4,000/- per month and derived the annual income as Rs. 48,000/- (Rs.4,000x12). The deceased has been survived by his wife and the petitioners 2 to 5 who are the daughter and sons of the deceased. Adopting the proposition of the Hon'ble Apex Court in the case of ***Sarala Verma and others v. Delhi Transport Corporation and other*** reported in ***2009 (2) TNMAC 1***, the learned Tribunal having deducted

1/4th of the annual income towards personal expenses of the deceased, had calculated ¾th of the income towards family expenses, which would arrived at Rs.36,000/-. Thereafter, the learned Tribunal as per Schedule 2 of Section 163(A) of the Motor Vehicles Act, 1988, had adopted multiplier '14'. Considering the age of the deceased as 44 years at the time of the accident and calculated the compensation under the head loss of dependency as Rs.5,04,000/- (Rs.36,000/-x14). Thereafter, the learned Tribunal proceeded to pass award in the following heads:-

Head	**Compensation awarded**
(I)Loss of Dependency:	Rs.5,04,000/-
(ii)Loss of consortium:	Rs.10,000/-
(iii)Loss of love and affection of petitioners 2 to 5:	Rs.40,000/- (Rs.10,000 each)
(iv)Funeral expenses:	Rs.10,000/-
(v)Medical Expenses as per Ex.P5:	Rs.1,10,590/-
(vi)Transportation :	Rs.10,000/-
Total compensation awarded:	Rs.6,84,590/- with interest @ 7.5 % from the date of the claim until the realization and costs.

10.With respect to claim petition in **M.C.O.P.No.772 of 2008**, yet another injured Ramasamy had filed a petition. The learned Tribunal on considering Ex.P13 disability certificate and Ex.P14 X ray and also considering the evidence of Dr.V.R.Ravi P.W.5 took note of the fact that the said Doctor has assessed the permanent partial disability at 40%, considering the fracture in the petitioner's spinal cord L1 to L4 bones. The learned Tribunal fixed the partial permanent disability at 40% on the basis of the evidence of P.W.5. Further the learned Tribunal has fixed Rs. 2,000/- per percentage for compensation for the injuries sustained and calculated the same as Rs.80.000/- (Rs.2,000x40). The learned Tribunal passed the award under following heads:-

Head	**Compensation awarded**
(I)Loss of earning:	Rs.80,000/- (2,000x40%)
(ii)Pain and suffering:	Rs.20,000/-
(iii)Medical expenses:	Rs.10,000/-
(iv)Transportation :	Rs.10,000/-
(v)Extra Nourishment:	Rs.10,000/-
Total compensation awarded:	Rs.1,30,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

11.The learned Tribunal partly allowed the claim petitions as discussed supra awarding equitable compensation at the rate of 7.5% interest per annum from the date of petition from the date of compensation amount with costs.

12.Challenging the same, these Civil Miscellaneous Appeals have been filed by the appellants/respondents 2 and 4/insurance companies.

13.The learned counsel for the appellant Mr.J.Ravindran contended that the victims as well as the petitioners travelled only as gratuitous passengers in the tractor and trailer. Even as per the complaint given to the police by the driver in the tractor, it has been submitted that they were working as road laying coolies and nearly 20 persons travelled after work and the said fact was not at all considered by the learned Tribunal while fastening the liability as against the appellant insurance companies. That apart the insurance policy for the tractor and trailer was a Kisan Package Policy and it covers only farm products carried in the trailer and there is no coverage for travellers/passengers in the tractor and trailer. The learned Tribunal without considering the terms and conditions and coverage of Kisan Package Policy had wrongly held that the respondents 2 and 4 were liable. He further vehemently contended that the learned Tribunal ought to have held that the travellers of tractor and trailer were unauthorized passengers and hence, they are not liable to be covered under the Kisan Package Policy and ought to have fixed the complete liability with the respondents 1 and 3 owners alone, thereby absolving the respondents 2 and 4 completely from the liability, since the policy do not cover the victims as well as the injured.

14.Per contra the learned counsel for the petitioners/claimants submitted that Ex.R1 was marked through R.W.1 namely N.Chandrasekar, Zonal Manager of the Insurance company, that is, the copy of the policy for tractor dated 18.05.2007.

15.A critical perusal of the said policy would reveal that the owner of the tractor I.e., the first respondent had paid an amount of Rs.25/- under IMT 29 covering legal liability to employees. That apart he vehemently submitted that all the 20 persons who travelled in the trailer were agriculture coolies and they were returning after completing their agriculture work in the farm of the owner of the tractor. Hence, there would not be any bar to conclude that they were the employees of the first respondent who were duly covered by Ex.R1 under IMT-29 under the head legal liabilities to employees. He further relied upon the judgment passed by the Hon'ble Division Bench of this Court in C.M.A.No.2183 of 2017 dated 12.09.2018, in which the Hon'ble Division Bench has held that the deceased who travelled in a tractor was a cleaner on the basis of evidence and concluded that his case would be duly covered by the insurance policy under IMT-28 premium, which has been collected for the traveller/cleaner by the insurance company.

16.He relied upon another case of the Hon'ble Supreme Court in the case of ***V.Renganathan and another v. Branch Manager and another*** reported in ***2023 ACJ 623***, wherein the Hon'ble Apex Court dealt with a similar case, in which a tractor met with an accident resulting in death of a person who travelled in the mudguard of the tractor wherein the Hon'ble Apex Court was pleased to direct the insurance company to pay compensation to the claimants and grant pay and recover the same from the tractor owner.

17.Per contra the learned counsel for the appellants relied upon the following judgments/orders passed by various Courts:-

(I)National Insurance Company Limited v. Kottam reported in 2003(2) TAC 849 (Kerala)

(ii)National Insurance Company Limited v. Chinnamma reported in 2004(2) TNMAC 123 (SC)

(iii)United India Insurance Company Limited v. Kamodi Bai reported in 2007 ACJ 2031 (MP)

(iv)National Insurance Company Limited v. Vedwati reported in 2007 (1) TNAMC 205 (SC)

(v)National Insurance Company Limited v. Vinayaga Moorthi reported in 2008 (7) MLJ 588 (MHC)

(vi)United India Insurance Company Limited v. C.I.Abraham reported in 2009 ACJ 492 (Kerala)

(vii)United India Insurance Company Limited v. Minnalkodi reported in 2009 (2) TNMAC 20 (MHC)

(viii)Iffco Tokio v. Sulochana reported in 2010 ACJ 1522 (MHC)

(ix)United India Insurance Company Limited v. Anguri Devi reported in 2010 ACJ 2059 (MP)

(x)Oriental Insurance Company Limited v. Chitra reported in 2011 (1)TNMAC 636 (MHC)

(xi)Oriental Insurance Company Limited v. Pauldurai reported in 2012 (1) TNMAC 545 (MHC)

(xii)ICIC v. Mudiyappa reported in 2013 (1) TNMAC 615 (Karnataka)

(xiii)Pinniammal v. Jakkammal reported in 2017 (1) TNMAC 662 (MHC) (xiv)HDFC v. Kannamma reported in 2020 (2) TNMAC 263 (MHC)

(xv)National Insurance Company Limited v. Murugammal reported in 2020 (2) TNMAC 503 (MHC)

(xvi)National Insurance Company Limited v. Chinnapillai reported in 2021 (1) TNMAC 360 (MHC)

18.The learned counsel for the appellants categorically submitted that the insurance companies are not at all entitled to indemnify the insurer, since the victims and the injured are not covered by the policy, which were marked as Ex.R1 and Ex.R2 before the learned Tribunal.

Discussion:-

19.The vehicle involved in the accident is a tractor and a trailer. Section 2(44) of Motor Vehicles Act, 1988 defines the tractor as follows:-

> *“'tractor' means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion:' but excludes a road-roller;”*

20.As per the Oxford Advanced Learner Dictionary, propulsion is the noun, which means the force that drives sth forward. Propel means to move forward in a particular direction especially mechanically propelled. It is thus very clear that the only load which could be carried in the tractor is propulsive equipment, which provides forwarding movement to the tractor.

21.The word 'trailer' is defined under Section 2(46) of Motor Vehicles Act, 1988 and the same is extracted as follows:-

> *“'trailer' means any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle;”*

22.The stage carriage is defined under Section 2(40) of Motor Vehicles Act, 1988 and the same is extracted as follows:-

> “*'stage carriage' means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey”*

23.The goods carriage is defined under Section 2(14) of Motor Vehicles Act, 1988 and the same is extracted as follows:-

“'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;”

24.A critical perusal of the definition for goods vehicle and stage carriage would reveal that a tractor is neither a goods carriage nor a stage carriage, in which either goods or passengers could be carried. That apart the definition of tractor and trailer could itself prove that both are separate and independent of each other. So it is pretty clear that a tractor cannot be used for carrying passengers either for unauthorized or gratuitous passengers. In the case in hand, Ex.P1 would reveal that 20 persons including the injured and the victims were staying for road work near Dharmathupatti, Kobai Forest check post. On the fateful day of 29.07.2007 at noon, all of them having worked in the Dindigul district Dharmathupatti, Panrimalai travelled in the trailer bearing registration No.TN-65-9042 which was attached to the tractor bearing registration No.TN-60-B-8943. The trailer was owned by the third respondent and the tractor by the first respondent respectively. While the tractor along with trailer came down from Alagumadai to Dharmathupatti near

Nayakkar kadu bus bus stop, the driver of the tractor lost balance. As the result of which, he dashed against the rock and as an after effect, the iron hook of the trailer suddenly broke and the trailer automatically capsized resulting in death of two persons and two injured. The legal heirs of the two deceased victims and the injured have preferred these claim petitions. As against the award passed in those claim petitions, the Civil Miscellaneous Appeals have been preferred by the insurance companies in which both the tractor and trailer have been insured.

25.No doubt on the date of accident, the insurance policy marked as Ex.R1 and Ex.R2 with respect to tractor and trailer were very much in effect. However, the pertinent question which has to be decided is whether those insurance policies would cover the case of the petitioners herein.

26.A critical perusal of both the exhibits would reveal that the tractor had been insured with the second respondent and the trailer has been insured with the fourth respondent. However, the policy of the Swaraj tractor insured with the second respondent has specifically mentioned that the said insurance policy is subject to delivery terms and conditions and clauses and guarantees in the Kisan Package Policy. That apart the policy covering the trailer is also exclusively for agriculture use and would cover driver only. However, in Ex.R1, the learned counsel for the petitioners submitted that the premium of Rs.25/- has been paid under the head IMT-29 the legal liability to the employees and hence, both the victims and other two injured I.e. all the petitioners would be covered under IMT-29 under the head legal liability to the employees. For better appreciation, the India Motor Tariff 2002, IMT-29 under the head legal liability of employees of insured other than paid driver/conductor/cleaner who may be travelling or driving in the employer's car is extracted as follows:-

> *"In consideration of the payment of an additional premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering*

in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more than ..... employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured. Subject otherwise to the terms, conditions limitations and exceptions of this Policy. NB.*

** To insert the number of employees for which the premium has been paid."*

27.Though IMT-29 would extend the legal liability to employees of the insured other than driver/contractor/cleaner neither, both the injured nor the victims in the instant case would come under the category of employees of the first respondent or third respondent. The victims in these petitions have travelled in the trailer as road work coolies. However the learned Tribunal had proceeded to observe that since both the tractor and trailer were having insurance coverage at the time of accident and the victims travelled as agriculture coolies to the land of owner of the vehicle, it is necessary to treat the victim persons as agricultural coolies and proceeded to fix the liability jointly and severely on all the respondents 1 to 4.

28.The learned Tribunal had completely negated the facts narrated in the FIR which is marked as Ex.P1, wherein it is categorically submitted and recorded by one of the travellers/eye witnesses of the accident that all the persons who travelled in the trailer with the tractor involved in the accident were road workers. When the policy with which the tractor and trailer has been insured, covers only the agricultural purpose and when there is no evidence to prove that the aforesaid 20 persons including victims and injured travelled in the trailer for doing agriculture work in the land of the respondents 1 and 3. The learned Tribunal ought not to have proceeded to conclude that the persons who travelled in the trailer were agricultural coolies.

29.The Hon'ble Apex Court in the case of ***Branch Manager v. Chinnapillai and others*** reported in ***2021 (1) TNMAC 360(MHC)*** has dealt with a similar case and the relevant portion of which, is extracted as follows:-

"15. Coming to the present case on hand, the deceased travelled in mudguard of the Tractor, cannot be used for carrying passengers as transport vehicle. Therefore, owner of the vehicle, respondent No.6 herein is liable to pay compensation to the respondents/claimants."

30.Yet another case of ***New India Assurance Company Limited v. Murugammal*** reported in ***2020 (2) TNMAC 503 (MHC)***, this Court has dealt with a similar case and the relevant portion of which, is extracted as follows:-

"24.In the instant case, the victim having travelled in a mud guard of the Tractor contrary to the policy condition as well as the permit condition, is not covered under the insurance policy. The mud guard of the tractor is not meant for carrying the passenger. Having violated the policy condition, the Insurance Company cannot be mulcted with the responsibility to pay and then recover from the owner of the vehicle.

25.In this case, at the time of admission of this appeal, this Court has directed the appellant Insurance Company to deposit 50% of the award amount along with the interest. Pursuant to the order passed by this Court, the appellant Insurance Company has deposited Rs.5,56,587/-. Thereafter, *the claimants have filed an application in C.M.P.No.5296 of 2017 to withdraw the same. In that application, vide order dated 20.04.2017, this Court has directed the claimants to withdraw 50% of their respective shares from the deposit of Rs.5,56,587/-.*

26.In the said circumstances, this Court holds that:

(i)The Insurance Company is absolved from liability due to the violation of policy condition;

(ii)The amount withdrawn by the claimants is permitted to be recovered from the sixth respondent herein / vehicle owner by the Insurer /Appellant Insurance Company;

(iii)The respondents 1 to 4 herein who are the claimants shall proceed against the vehicle owner for the balance portion of the award amount and

(iv)The remaining 50% of the amount deposited by the Insurer and lying in M.C.O.P., account is permitted to be withdrawn by the appellant Insurance Company along with the accrued interest."

31.A clear reading of Sections 147 and 149 r/w relevant Sub Clauses of 2(14), 2(44) and 2(40), 2(46) of Motor Vehicles Act, 1988 would make it clear that as per policies marked as Ex.R1 and Ex.R2, the appellants had covered third party risk and risk of driver alone and that too Kisan Package Policy and in the course of exclusively agricultural purpose. Precisely the instant case is the one of no insurance, the appellant is not required to indemnify the owner of the tractor and trailer in respect of liability arisen out of the use of tractor and trailer.

32.Hence, in the facts and circumstances of the present case, the learned Tribunal has erred by concluding that the respondents 2 and 4 are jointly and severely liability to pay the amount of compensation. Needless to say that the amount of compensation has to be exclusively paid only by the respondents 1 and 3 I.e. the owner of the respective tractor and trailer.

33.Therefore, I have no hesitation to conclude that the finding of the learned Tribunal that the insurance company, the respondents 2 and 4 jointly and severely liable to pay compensation is *perse* illegal. The instant case in hand is a clear case of no insurance at all not a case of breach of policy. The tractor in the instant case has insured only the driver and only one employee for whom premium of Rs.25/- has been paid under IMT-29. The additional payment of Rs.25/- would cover only one employee. However, a clear perusal of the facts and circumstances of the case would reveal that neither the victims nor the injured are neither the driver nor one of the employees of either the owners of tractor or the trailer. Hence, this Court is of the view that the owners of the respective tractor and trailer are liable to pay the compensation. There is no dispute regarding the quantum awarded by the learned Tribunal.

34.In view of the same, this Civil Miscellaneous Appeal is allowed and the finding of the learned Tribunal is set aside with regard to liability alone.

35.The owners of the respective tractor and trailer I.e. Mr.P.Irulapan and Subramanian are directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as per apportionment made by the learned Tribunal, after deducting any amount received by her earlier without filing any formal petition before the Tribunal. Insofar as the share of the minor claimants are concerned, the learned Tribunal is directed to deposit the award amount as per apportionment made by the learned Tribunal, in a Fixed Deposit under a periodically renewable scheme till they attain majority and the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors. The claimants are not entitled for interest for the default period, if there is any. The insurance companies are entitled to withdraw the award amount, if any already deposited before the learned Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

31.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

L.VICTORIA GOWRI, J.

Mrn

To

1.The Motor Accident Claims Tribunal,
(Principal District Judge), Tiruchirappalli.

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

C.M.A.(MD)Nos.144 to 147 of 2018

31.01.2024