BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.861 of 2019
and
C.M.P(MD) No.11280 of 2019

The Branch Manager,
National Insurance Company Limited,
Karaikudi. ... Appellant/3rd Respondent

-vs-

1. Nathiya

2. Minor Prabakaran
3. Minor Tharun

(Minor respondents 2 and 3 are represented by their mother and guardian, the first respondent, Nathiya)

4. Muthukannu

5. Singayee ... Respondents 1 to 5/ Petitioners

6. S.Chellaiah ... 6th Respondent/1st Respondent

7. M.Chandran ... 7th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.733 of 2017, dated 29.04.2019 on the file of the Motor Accidents Claims Tribunal, Special Court for E.C & NDPS Act Cases, Pudukkottai.

For Appellant	: Mr.J.S,Murali
For R1 to R5	: Mr.R.Balakrishnan
For R6 and R7	: No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.733 of 2017, on the file of the Motor Accident Claims Tribunal, Special Court for E.C & NDPS Act Cases, Pudukkottai, primarily on the ground of liability.

2. According to the claimants, the deceased was riding a two wheeler on 22.03.2017. At that point of time, the Tractor owned by the first respondent to which a Trailer was attached was moving in a rash and negligent manner. In view of the rash and negligent driving on the part of the Tractor driver, the rear door of the Trailer got opened and it dashed against

the deceased, the victim had fallen down, sustained grievous injuries and died on the spot.

3. The claimants have further contended that the deceased was an agriculturist and he was aged about 34 years, earning a sum of Rs.15,000/- per month.

4. The appellant/Insurance Company has filed a counter contending that only the Trailer was insured with them and not the Tractor. According to the Insurance Company, the Tractor was an uninsured vehicle. Therefore, attaching the trailer with an uninsured vehicle is against the policy conditions and therefore, they are not liable to pay any compensation. He had further contended that the negligence could be attributed only to the driver of the Tractor and when the Tractor was an uninsured vehicle, the question of payment of any compensation would not arise.

5. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the driver of the Tractor was having a valid driving licence at the relevant point of time. The Tribunal further found that only the Trailer which is insured with the appellant/Insurance Company has

caused accident and has proceeded to fix the compensation of Rs.12,84,600/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

6. According to the learned counsel appearing for the appellant, the first respondent in the claim petition is the owner of the Tractor. The said Tractor has not been insured. The second respondent in the claim petition is the owner of the Trailer, which is insured with the appellant/Insurance Company. Unless the driver of the Tractor is attributed with negligence, the payment of compensation by the Insurance Company would not arise. Even assuming that there is no negligence on the part of the driver of the Tractor, since the said vehicle has not been insured, they are not liable to pay any compensation. The Tribunal has erroneously mulcted the liability upon the Insurance Company based upon the fact that the Trailer has been insured. Hence, he prayed for setting aside the award passed by the Tribunal as against the Insurance Company.

7. Per contra, the learned counsel appearing for the respondents 1 to 5/ claimants had contended that the rear door of the trailer had got suddenly opened and it dashed against the rider of the two wheeler. Therefore, only the

part of the Trailer has caused the accident and therefore, the insurer of the said Trailer is liable to pay the compensation. He further contended that the award amount of the Trailer is on the lessor side and he prayed for enhancement of compensation.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials on record.

9. While the victim was riding a two wheeler, the Trailer attached to a Tractor was moving ahead of the said two wheeler. The rear door of the Trailer has got opened and dashed against the forehead of the victim, who was riding a two wheeler. Due to the said impact, the victim sustained grievous injuries and he died on the spot. The manner of accident is not in dispute.

10. The only contention raised on the side of the Insurance Company is that the Trailer was not attached to an insured vehicle. Therefore, they are not liable to pay any compensation. It is clear that the Trailer, which is insured with the appellant/Insurance Company has been attached to an uninsured Tractor. As per the policy conditions, the Trailer should always be attached to

a Tractor which is an insured vehicle. Therefore, there is a clear violation of policy conditions. When there is violation of policy condition, the Insurance Company has to satisfy the award amount and thereafter, recover the same from the owner of the Trailer, viz., M.Chandran, who is arrayed as the seventh respondent in the appeal. Though the learned counsel appearing for the claimants had raised a plea for enhancement of compensation, this Court is not in a position to consider the same in an appeal filed by the appellant/ Insurance Company challenging their liability.

11. In view of the above said facts, the quantum of the award passed by the Tribunal is hereby confirmed and the appellant/Insurance Company is directed to satisfy the award and thereafter, they are at liberty to recover the same from the owner of the Trailer, viz., seventh respondent in the appeal by initiating execution proceedings in the Motor Accident Claim petition, following the judgment of the Honourable Supreme Court reported in ***(2004) 13 SCC 224 (Oriental Insurance Company Ltd., Vs. Nanjappan and others).***

12. With the above said observation, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. The appellant/Insurance

Company is directed to deposit the entire award amount along with interest at the rate of 7.5% p.a., within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit being made, the claimants 1, 4 and 5 are entitled to withdraw their share along with accrued interest and costs by filing necessary petition before the Tribunal. As far as the share of the minor claimants 2 and 3 are concerned, the amount shall be deposited in a Nationalized Bank till they attain majority and the first claimant the mother of the minor claimants is permitted to withdraw the interest once in three months. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

30.07.2024

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

1. The Motor Accidents Claims Tribunal,
   Special Court for E.C & NDPS Act Cases,
   Pudukkottai.

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

R.VIJAYAKUMAR,J.

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