



C.M.A(MD)No.492 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27.02.2024

CORAM:

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

C.M.A(MD)No.492 of 2016

and

C.M.P(MD)No.6301 of 2016

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
Kumbakonam.

... Appellant/2nd Respondent

Vs.

1.Mathiyalagan

2.Amutha

3.Ramkumar

4.Rama

... Respondents 1 to 4/Petitioners 1 to 4

Maruthamuthu (Died)

5.Chinnammal

6.Selvasekar

7.Saminathan

8.Shanthi

... Respondents 5 to 8/Respondents 3 to 6



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.4,10,000/- (Rupees Four Lakhs Ten Thousand Only) passed in M.C.O.P.No.116 of 2013, dated 19.11.2015 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Kumbakonam.

For Appellant : Mr.C.Jawahar Ravindran
for Mr.G.Ganesh Kumar

For R-1 to R-4 : Mr.B.Anandan

For R-5 : No appearance

For R-6 to R-8 : Mr.S.R.Anbarasu

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.116 of 2013 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Kumbakonam, wherein the respondents 1 to 4 herein have filed a petition before the Tribunal claiming compensation for the death of one minor Appu @ Ranjith Kumar.



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2. The Tribunal has awarded a sum of Rs.4,10,000/- towards compensation and directed the second respondent to pay the amount to the petitioners and recover the same from the respondents 3 to 6. As against the liability, the present Civil Miscellaneous Appeal has been preferred by the second respondent / Insurance Company.

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 Tribunal are as follows:

The first and second respondents are parents of the deceased Appu @ Ranjith Kumar and the third and fourth petitioners are brother and sister of the deceased. The deceased was aged about 14 years on the date of accident. On 06.05.2011 at about 10.00 am, the petitioners 3 and 4 along with the deceased went to Kudithangi for summer vacation. At the time, the driver of the first respondent drove the tractor for agricultural purpose and the deceased Appu @ Ranjith Kumar also went along with him as Assistant when the tractor was ploughing. The deceased fell down from the tractor and sustained injuries and thereafter, he died. The accident took



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place due to the negligence on the part of the driver of the first respondent and the first respondent vehicle was insured with the second respondent on the date of accident. Therefore, the respondents are liable to pay compensation to the petitioners.

5. The counter averments of the second respondent are as follows:

The tractor of the first respondent was insured with the second respondent on the date of accident and the driver of the first respondent had no valid license to drive the vehicle. The age status of the deceased are not correct. The accident was happened in a private land. Thereby, the Insurance Company is not liable to pay compensation. The accident was caused solely due to the negligence of the deceased alone. The deceased was travelled on the mudguard of the tractor. Therefore, the second respondent is not liable to pay any compensation to the petitioner.

6. Before the Tribunal, on the side of the petitioners, they have examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.4. On the side of the respondents, they examined R.W.1 and marked Exhibit R.1.



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7. The Tribunal after considering the evidences adduced on either side, awarded compensation by directing the second respondent to pay the amount and recover the same from the respondents 3 to 6 under the doctrine of pay and recover. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been preferred by the second respondent / Insurance Company.

8. The learned Counsel appearing for the appellant / second respondent would contend that the deceased was travelled as gratuitous passengers in the tractor and the accident was occurred only due to the negligence on the part of the deceased and thereby, the second respondent / Insurance Company is noway liable to pay compensation to the petitioners. But the Tribunal without considering the above said aspect, erroneously awarded compensation and directed the second respondent to pay and recover the same from the owner of the vehicle. Therefore, the order passed by the Tribunal is liable to be set aside.



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9. To support the contention of the learned Counsel appearing for the appellant / second respondent, he has relied upon the following judgments:

1. National Insurance Company Limited Vs. Kottam reported in 2003 (2) T.A.C. 849 (Kerala),

2. National Insurance Company Limited Vs. V.Chinnamma and Others reported in 2004 (2) TANMAC 123 (SC),

3. United India Insurance Company Limited Vs. Kamodi Bai and Others reported in 2007 ACJ 2031 (MP),

4. New India Assurance Company Limited Vs. Vedwati & Others reported in 2007 (1) TNMAC 205 (SC),

5. Divisional Manager, New India Assurance Company Limited, Thanjavur Vs. Vinayaga Moorthi and Others reported in 2008 (7) MLJ 588 (MHC),

6. United India Insurance Company Limited Vs. C.I.Abraham reported in 2009 ACJ 492 (Kerala),

7. United India Insurance Company Limited, Branch Office, D-8, South Car Street, Post Box No.25, Chidambaram Vs. Minnalkodi and Others reported in 2009 (2) TNMAC 20 (MHC),

8. Iffco-Tokio General Insurance Company Limited Vs.



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Sulochana and Others reported in 2010 ACJ 1522 (MHC),

9. United India Insurance Company Limited Vs. Anguri Devi and Others reported in 2010 ACJ 2059 (MP),

10. The Branch Manager, Oriental Insurance Company Limited Pudukottai Vs. Chitra and Others reported in 2011 (1) TNMAC 636 (MHC),

11. Oriental Insurance Company Limited Vs. Pauldurai and Others reported in 2012 (1) TNMAC 545 (MHC),

12. Divisional Manager, ICICI Lombardo General Insurance Company Limited Vs. Mudiappa and Others reported in 2013 (1) TNMAC 615 (Karnataka),

13. C.Pinniammal Vs. Jakkammal and Others reported in 2017 (1) TNMAC 662 (MHC),

14. Manager, HDFC ERGO General Insurance Company Limited Vs. Kannamma and Others reported in 2020 (2) TNMAC 263 (MHC),

15. New India Assurance Company Limited Vs. Murugammal and Others reported in 2020 (2) TNMAC 503 (MHC),

16. Branch Manager, New India Assurance Company Limited Vs. Chinnapillai (Died) and Others reported in 2021 (1) TNMAC 360 (MHC) and



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17. *Bharati AXA General Insurance Company Limited Vs. Aandi and Others reported in 2018 (2) TNMAC 731 (MHC).*

10. The learned Counsel appearing for the respondents 1 to 4 / petitioners 1 to 4 would contend that the deceased was proceeding in the tractor while the tractor was ploughing in the agricultural land and he was travelled as assistant and assisted the agricultural work. Therefore, he cannot be treated as gratuitous passenger and it is admitted fact that the first respondent vehicle was insured with the second respondent on the date of accident. Therefore, the Tribunal has rightly held that the second respondent is liable to pay the amount and can recover from the owner of the vehicle. Hence, the present Civil Miscellaneous Appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the points for determination in this appeal are:

"1) Whether the deceased was travelled as gratuitous passenger in the tractor?



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- 2) Whether the Insurance Company is liable to pay the said amount?
- 3) Whether the appeal has to be allowed or not?"

12. Point Nos.1 and 2:

In this case, there is no dispute that the deceased while ploughing the vehicle, fell down from the tractor and died. There is no dispute that the vehicle was insured with the second respondent / Insurance Company. According to the petitioners, the deceased was travelled as gratuitous passenger and thereby, the Insurance Company need not pay any amount to the petitioners. If at all any compensation awarded to the petitioners, the owner of the vehicle alone has to pay the amount. According to the respondents 1 to 4 / petitioners, the deceased was not travelled as gratuitous passenger. When the tractor was ploughing in the agricultural field, he assisted in agricultural work. At that time, he fell down from the tractor and died due to the negligent driving of the driver of the first respondent. In this context, the appellant / second respondent also admitted that the tractor was ploughing at the time of accident and the policy was covered for cleaner also. While so, P.W.1 also in his evidence stated that the deceased was assisted agricultural work in the tractor. At the



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time, he fell down and died. Therefore, the available evidence shows that the deceased died while ploughing the vehicle and he was assisted in the tractor for the agricultural work. On careful perusal of the above judgments relied on by the learned Counsel for the appellant, they will not be applicable to the present facts of the case, because in this case, the tractor was not plied in the road and the same was utilized for the purpose of agricultural work. At that time, the deceased was engaged as assistant and thereby, the accident was happened. Therefore the facts of the case are distinguishable from the above said citations. The insurance also covered for the cleaner and for agricultural work some assistance is needed and thereby, the policy also covered for the cleaner. Since the term 'Cleaner' has not been defined, the second respondent is liable to pay compensation to the petitioners. The owner of the vehicle also permitted the deceased, who was aged about 14 years for assistance and thereby, they also liable to pay compensation. However, the second respondent can satisfy the award amount to the petitioners and then they can recover the same under the doctrine of pay and recover. Therefore, as discussed above, this Court is of the opinion that the deceased was travelled as assistant in the tractor, while ploughing the agricultural land and the policy also covered for the cleaner.



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Therefore, this Court is of the opinion that the deceased was not travelled as gratuitous passenger and he was engaged in an agricultural work for assistant. Since the tractor was insured with the second respondent, the second respondent is liable to pay compensation and he can recover the same from the owner of the vehicle (i.e.,) respondents 3 to 6. Thus the point Nos.1 and 2 are answered.

13. Point No.3:

In this case, the Insurance Company preferred the appeal on the ground that the deceased was travelled as gratuitous passenger and thereby they are not liable to pay compensation. This Court already in the previous point decided that the deceased was not travelled as gratuitous passenger and while engaging the tractor for agricultural purpose, he assisted and the vehicle was also insured with the second respondent on the same date of accident. Thereby he is liable to pay compensation.

14. In this case, there is no dispute with regard to the quantum of the amount and the Trial Court also awarded a sum of Rs.4,10,000/- by directing the second respondent to pay and recover. Therefore, the order



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passed by the Tribunal by directing the appellant / second respondent to pay the amount and recover the same from the owner is in order.

Therefore, the present Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal stands dismissed by confirming the order of the Tribunal in M.C.O.P.No.116 of 2013 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Kumbakonam. The appellant / second respondent is directed to pay the entire amount as awarded by the Tribunal within two months from the date of this judgment, if already not deposited. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.TheMotor Accident Claims Tribunal
cum Principal Sub Judge,
Kumbakonam.



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



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P. DHANABAL, J.

BTR

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