IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3050 of 2021 & Cross Obj.No.17 of 2022
and
CMP.No.17342 of 2021

CMA.No.3050 of 2021:

M/s. United India Insurance Co. Ltd.,
Having Office at No.6/341-C,
Post Office Street, Avinashi. ...Appellant

Vs.

1. Sundari
2. Nagaraj
3. Atharmalai
4. M/s. Sri Kottai Muniappan Concreters,
   At No.151, Kurunthankadu, Cheyar,
   Avinashi. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the award and decree dated 12.11.2019 made in MCOP.No.229 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.R.Nalliyappan, for R1 & R2

Cross Obj.No.17 of 2022:

1. Sundari
2. Nagaraj ...Cross Objectors

Vs.

1. Atharmalai
2. M/s. Sri Kottai Muniappan Concreters,
At No.151, Kurunthankadu, Cheyar,
Avinashi. ...Respondents

Cross Objection filed under Order 41 Rule 22 of CPC, against the judgment and decree dated 12.11.2019 passed in MCOP.No.229 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Cross Objectors : Mr.R.Nalliyappan

COMMON JUDGMENT

Since both appeal and the cross objection arise out of the very same accident, they are disposed through this common judgment.

2. Challenging the liability fastened against the insurance company as well as the quantum of compensation awarded in MCOP.No.229 of 2018 dated 12.11.2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai, the insurance company has filed CMA.No.3050 of 2021. Being dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have filed Cross Objection No.17 of 2022.

3. For the sake of convenience, the parties are referred to in the same array as they were arrayed in CMA.No.3050 of 2021.

4. It is the case of the claimants/respondents 1 and 2 that, on 01.01.2018 at about 02.30 hours, when the deceased Sathiyaseeelan was travelling in the Tractor bearing Regn.No.TN-40-V-1099 owned by the 4th respondent insured with the appellant herein on Salem to Coimbatore NH main road, Pallagoundenpalayam, Samiyarpalayam Pirivu bridge towards east to west direction, as the 3rd respondent drove the said tractor in a rash and negligent manner without following the traffic rules, the deceased Sathiyaseelan fell down, due to which, he sustained grievous

injuries and succumbed to the same. Thereby, the 1st and 2nd respondents / claimants, who are the dependents of the deceased Sathiyaseeelan filed a claim petition claiming a sum of Rs.30,00,000/- towards compensation. Before the tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P1 to P11 and Ex.X.1 and on the side of the appellant and the respondents therein, one witness viz., R.W.1 was examined and Ex.R1 was marked. After trial, the Tribunal awarded a sum of Rs.14,78,872/- towards compensation for the death of the deceased Sathiyaseeelan, payable by the appellant-insurance company in favour of the 1st and 2nd respondents/claimants. Aggrieved by the liability fastened as well as the quantum, the appellant-insurance company has filed the Civil miscellaneous appeal in CMA.No.3050 of 2021 and the claimants have filed Cross Objection No.17 of 2022, seeking enhancement of the compensation.

5. Learned counsel for the appellant submitted that, as per the RC as well as the Insurance policy, no person is entitled to travel as a passenger, except the driver. However, contrary to the same, the deceased was travelling in the tractor, who could only be said to be a gratuitous

passenger and, therefore, the claimants are not entitled to claim any compensation, as the deceased would not come within the ambit of third party. However, the tribunal without considering the same had awarded the compensation and fastened the liability as against the appellant-insurer which is wholly unsustainable and necessarily the said award of the tribunal has to be interfered with.

6. Per contra, the learned counsel appearing on behalf of the 1st and 2nd respondents submitted that the issue involved in the present case is no loner *res integra* and similar issue has already been decided by this Court in ***CMA.Nos.3661 of 2013 & 2080 of 2014*** dated ***05.01.2017***, wherein this Court had held that, *'third party' is one who is neither the insurer nor the insured and the third party coverage must include all third parties. In the light of the Full Bench judgment of the Madhya Pradesh High Court, when a 'third party' includes everyone, be it a person travelling in another vehicle, one walking on the road or a passenger of the vehicle which is the subject matter of insurance policy, the finding given by the Tribunal that both the injured claimants, while travelling as coolies on the Trailer attached to the Tractor sustained injuries only due to the fault*

of its driver, are entitled to the compensation from the insurance company, does not warrant any interference. One another contention made by the learned counsel for the appellant that the owner of the vehicle had taken only an 'Act policy' and when there was no coverage on the employees, namely, loadmen of the Tractor, also cannot be accepted, in the light of the judgment of this Court in the New India Assurance Company Limited, Salem v. Vijayakumar and others, 2001-2-L.W.833, wherein this Court has held thateven if it is an 'Act policy', the insurance company has to pay the amount quantified by the Tribunal and thereby dismissed the said appeal filed by the insurance company. Accordingly, he prayed for dismissal of this appeal, by following the above said decision of this Court.

7. Heard learned counsel on either side and perused the materials available on record.

8. The accident and the manner in which the accident happened are not disputed. The issue that arise for consideration in this appeal is whether the claimants are entitled to claim compensation for the death of

the deceased who travelled in the mudguard of the tractor and not in the trailor.

9. It is evident from the materials available on record, more particularly the policy of insurance that the said policy of insurance does not authorise any one to travel in the mudguard of the tractor. If at all the deceased had travelled in the trailor and if the said trailor is insured and if at all the said person/deceased falls within the definition of Coolie, then such person is entitled to claim compensation. However, in the present case, the deceased was not coolie and after completion of his work, the deceased had travelled as a passenger by sitting in the mudguard and, therefore, the deceased cannot be brought within the ambit of third party to claim compensation at the hands of the insurer.

10. The decision relied upon by the learned counsel for the 1st and 2nd respondents/claimants in ***CMA.Nos.3661 of 2013 & 2080 of 2014*** dated ***05.01.2017***, cannot be imported directly to the present case for the simple reason that the nature of the policy of insurance alone determines whether the passenger in the vehicle is a third party. If the policy is a

comprehensive policy, then the passenger travelling in the vehicle could be held to be a third party; rather if it is an Act Only Policy, then the passenger travelling in the vehicle will not fall within the ambit of third party. In the present case, the policy of insurance specifically provides only for the driver of the tractor to be covered in the event of any eventuality and such being case, the deceased, being a gratuitous passenger in the vehicle, would not be covered under the terms of the policy and, therefore, the claimants are not entitled for any compensation at the hands of the insurer. However, the claimants could seek for compensation at the hands of the owner of the tractor.

11. However, in the absence of any appeal by the owner of the vehicle, viz., 4th respondent, this Court is not inclined to interfere with the compensation awarded to the claimants and the claimants are entitled to recover the compensation awarded by the tribunal from the owner of the vehicle, viz., 4th respondent.

12. In view of the aforesaid discussion, the Cross Objection No.17 of 2022 filed by the 1st and 2nd respondents/claimants seeking

enhancement of compensation stands closed and it is open to the said claimants to seek for enhancement against the 4th respondent/owner. The Civil Miscellaneous Appeal filed by the Appellant-insurance company in CMA.No.3050 of 2021 stands allowed and the judgment and decree dated 12.11.2019 passed by the Tribunal in MCOP.No.229 of 2018 insofar as fastening liability on the appellant/insurance company is set aside. The appellant-Insurance Company is permitted to withdraw the compensation amount, if any, already deposited by them. The 1st and 2nd respondents/claimants are at liberty to workout their remedy for seeking compensation/enhanced compensation in the manner known to law as against the 4th respondent. No costs. Consequently, the connected miscellaneous petition is closed.

31.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

The Motor Accidents Claims Tribunal,
Sub Court, Perundurai.

M.DHANDAPANI, J.

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and
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