BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2025

Pronounced on : 17.07.2025

CORAM:

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.908 of 2022
&
C.M.P.(MD)No.8810 of 2022

The Divisional Manager,
United India Insurance Company Ltd.,
Having Office at 37/2, Mattappa Street,
Neel Complex, 2nd Floor,
Tenkasi. ... Appellant/2nd respondent

Vs.

1.Jeyamathi Annathai

2. Minor Nithya

3.Minor Renish .... Respondents 1 to 3 / Petitioners

Minors respondents 2 and 3 are represented through their guardian, next friend and mother Jeyamathi Annathai, 1st respondent herein

4.Jesuraja .... 4th Respondent/ 1st Respondent

5. Malliga ... 5th Respondent/ 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.08.2021 in M.C.O.P.No.227 of 2019 on the file of the Motor Accident Claims Tribunal cum Additional District Court (FTC), Tenkasi.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mrs.M.Sahaya Selvi – for R1 to R3

No appearance – for R4 & R5

JUDGMENT

(Judgment of this Court was delivered by R.POORNIMA, J.)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 17.08.2021 passed in M.C.O.P.No.227 of 2019 by the Motor Accident Claims Tribunal cum Additional District Court (FTC), Tenkasi.

2. The Motor Accident Claim Tribunal awarded a sum of Rs.30,06,000/- towards compensation for the claimants. The learned Judge directed the appellant/Insurance company to pay the entire award amount.

3. Aggrieved by the said order, the Civil Miscellaneous Appeal has been filed by the Insurance Company who is the 2nd respondent before the Motor Accident Claims Tribunal in M.C.O.P. No.227 of 2019 against the negligence and quantum.

4. The brief facts of the petition filed by the claimants before the Tribunal is as follows:

(a) On 09.03.2017 at about 7.30 hours the deceased, a loadman was standing behind the lorry bearing Registration No.TN 74 K 4234 by holding the iron door at Courtallam Parasakthi Nagar in front of Singamuthu's vacant land while unloading the bricks. At that time, the 1st Respondent's driver negligently moved the vehicle and lifted the Trailer/Tipper without giving a warning by blowing horn or signal causing it to come into contact with a live electric wire located on that street. Due to electrocution, the deceased was thrown away and he sustained serious injuries and he succumbed to death on the way to the Government Hospital, Tenkasi. The accident happened due to the negligent act of the 1st Respondent's driver. Since the 1st Respondent's vehicle was insured with the 2nd Respondent's Insurance Company, both the 1st and 2nd respondents are jointly and severally liable to pay compensation to the petitioners.

(b) The 1st petitioner is the wife and the 2nd and 3rd minor petitioners are the daughters of the deceased.

(c) The 3rd Respondent is the mother of the deceased and she is living separately. Moreover, the 3rd respondent has huge movable and immovable property and a huge balance in her bank account. She deserted the deceased, did not attend the last ceremony of the deceased and was not on good terms with the petitioners.

(d) The deceased Lakshmanan worked as a loadman and was earning a sum of Rs.15,000/- per month and he is the breadwinner of his family. If the accident had not happened the deceased would have survived for more than 70 years.

Hence, this petitioner claimed compensation of Rs.50,00,000/- against the 1st and 2nd Respondents.

5. The fourth and fifth respondents have not contested the claim petition.

6. The counter affidavit filed by the second respondent in the claim petition is as follows:

a) The 2nd Respondent denied the averments stated in the petition. The FIR in Cr. No.66/17 of Courtallam Police Station disclosed that when the lorry was parked at the vacant site of one Singamuthu, the lorry driver moved the trailer to unload the bricks loaded in the lorry, at that time the deceased Lakshmanan was standing at the back side of the lorry by touching the Iron door sustained electrocution and died on the way to the hospital. The petitioners admitted that the occurrence took place while the deceased was in the course of employment at the private vacant site of one Singamuthu. Therefore, this case has to be filed before the competent forum. This Court has no jurisdiction to try this case.

b) The policy taken by the 1st Respondent does not cover the employee's liability. Hence, the 2nd Respondent is not liable to pay compensation. The 2nd Respondent denied the age, income and occupation of the deceased. The quantum of compensation claimed in the petition is highly excessive and exaggerated. The petitioners are entitled to claim only 7% of the interest. Hence, the petition is liable to be dismissed.

7. During trial, on the side of the petitioners P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.11 were marked. On the side of the respondents, no witness was examined and no document was marked.

8. After hearing both the parties, the Tribunal allowed the petition and awarded a sum of Rs.30,06,000/- as compensation. Against which, the present Civil Miscellaneous Appeal has been preferred by the second respondent/Insurance Company on the following among other grounds:

a) That the Tribunal has failed to take note of the fact that since the accident took place in the private place and the requirement of Section 147 of the Motor Vehicles Act has not been fulfilled, the claimants are not entitled to invoke the provisions of Motor Vehicles Act and cannot get compensation under Motor Vehicles Act.

b) That the Tribunal has miserably failed to understand Section 147 of the Motor Vehicles Act and the requirements and limits of the Policy contemplated in sub Sections (1) and (2)(i)(ii).

c) That the Tribunal has no Jurisdiction to pass an award under the Motor Vehicles Act against this appellant.

d) That the Tribunal failed to take note of the Policy issued to the lorry which is an "Act Policy" and the deceased is not covered by the Policy.

e) The Tribunal has erred in awarding compensation to the death of the deceased who is not covered by the Policy.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

9. The learned counsel for respondents 1 to 3/claimants vehemently argued and filed a written argument by stating that the deceased is not an employee of the 1st respondent, but he was a load man, and the incident occurred only during negligent operation of the vehicle by the 1st respondent's driver. The 1st respondent is vicariously liable for the act of his driver. Since the 1st respondent insured the vehicle with the 2nd respondent, he is also liable to pay compensation. He relied upon the judgement reported in **M/s.*National Insurance Co. Ltd. vs. P. Alagesan (C.M.A.No.3711 of 2012)*** wherein, this Court has

held as follows :

> *"The claim petition is maintainable even if the driver of the vehicle was not proved to be negligent in driving the vehicle. Negligence is only one of the causes of action for claiming compensation in respect of accidents arising out of the use of motor vehicle. The accident must be connected with the use of the motor vehicle, but such connection need not be direct and immediate."*

10. The learned counsel for the respondents 1 to 3 /claimants also relied on the judgments in (i) ***State vs. Dohana Jamnadas & others*** reported in ***AIR 1961 Guj 182***, (ii) ***Ashok Kumar Mishra vs. State of Orissa [2013 Crl.LJ 1431],*** (iii) ***Prakash Chemicals Pvt. Ltd. vs. Krishna Singh Sata Singh [AIR 1993 Guj 121]***, to interpret what is public place.

> *"What is required is that the place must be open for entry by an indeterminate number of members of the public, even if conditions are attached to entry or use."*
>
> *"A public place is one where access is open to members of the public, subject to reasonable conditions, and not limited to a determinate group."*
>
> *"It is not ownership, but the use of the place and the right of access, even if permissive, limited, or regulated, that defines a public place"*

11. The learned counsel for the respondents 1 to 3 /claimants further argued that an 'Act Policy' does not cover the deceased is legally unsustainable. Under Section 146 of the Motor Vehicles Act, third-party insurance is mandatory, and an 'Act Policy' explicitly provides for third-party liability coverage. The deceased, being a third party to the insured vehicle, is fully covered under the policy. The insurance company cannot escape from the liability by raising a technical plea that the policy is an 'Act policy', as long as the deceased was a third party and the accident occurred in a public place, both of which are established here. The Tribunal's decision is, therefore, sound and must be upheld. Therefore, the learned counsel prayed to enhance the compensation to atleast Rs.52,50,000/- by considering the deceased young age.

12. Now the Court is to decide the following points for consideration :

i) Whether the accident occurred in a private place and the requirement and limits of policy conditions of Section 147 of the MV Act have not been fulfilled?

ii) Is the insurance policy issued was an “Act Policy” that does not cover the death of the deceased?

13. Points Nos. 1 and 2:-

Section 147 of the Motor Vehicles Act deals with the requirement of policy and limits of liability in Motor Insurance Policy. The Coverage for employees is limited and is applicable only when legal liability arises out of the use of the vehicle in a public place.

14. In the present case, as per the respondents 1 to 3/ claimants, the deceased who was employed as a load man stood behind the lorry by holding its iron door to reload the bricks. At that time, the Lorry driver of the first respondent suddenly and negligently lifted the trailer without giving a warning by blowing the horn or giving a signal which came into contact with an overhead electric wire, resulting in the electrocution and unfortunate death of the load man.

15. The learned counsel for the appellant failed to establish that the deceased was the employee of the first respondent or the employee of the land owner. However, the eyewitness to the occurrence who was examined as P.W.2, clearly supported the case of the petitioner and narrated the entire episode by stating that he went along with the deceased to reload the bricks and he had witnessed the occurrence. He

has not stated that he or the deceased were employed with the first respondent or the plot owner. The FIR was lodged against the driver of the first respondent and the final report was also filed against the same driver. This proves that the deceased was not an employee of the first respondent or the plot owner, but he was a load man/third party and the accident occurred due to the negligent act of the driver of the first respondent.

16. As per the appellant, the place of occurrence is not a public place as contemplated in Section 2(34) of the Motor Vehicles Act, 1988. Section 2(34) of the MV Act defined the public place as follows:

> *“'public place' include roads, streets, ways, and any other place where the public has a right of access. It also specifically includes any place or stand where passengers are picked up or dropped off by a stage carriage.”*

17. The rough sketch is marked as Ex.P9 and the observation mahazar is marked Ex.P10 which clearly established that the place of occurrence is a “public place” as contemplated under Section 2(34) of the MV Act.

18. The contention of the learned counsel for the appellant is that the Tribunal has failed to take note of the policy issued to the lorry as an 'Act Policy' and the deceased was not covered by the said policy and relied upon the following judgment in ***HDFC Ergo General insurance Co. Ltd., Chennai versus Bhagya Rekha and others*** (**C.M.A.No.1893 of 2020**) in which paragraph Nos. 19 and 20, a Division Bench of this Court has held as follows :

> *"19. On the question of the liability of the insurance company, it is seen from the policy marked as Ex.R.1 which discloses that the insurance company has collected premium of Rs.50/- for paid driver/conductor/cleaner under IMT 28. As rightly pointed out by the learned counsel for the Insurance Company as per the Guidelines dated 29.03.2012 IMT 28 provides for extra premium per capital to Rs.50/- for driver or cleaner or conductor employed with the conductor with the operation of insured vehicle. Therefore, the deceased would not be covered by the policy. Moreover, the deceased at the time of the accident has travelled in the tractor sitting on mudguard and the tractor being goods vehicle there has been breach of condition of policy. In the Manager IFFCO-TOKYO GENERAL INSURANCE CO. LTD., V.G. RAMESH, 2012(1) TN MAC 820 this Court referring Asha Rani's case and other*

judgments, has held as follows:

> *"The question as to whether the Insurance Company is statutory liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by the Hon'ble Apex Court in Asha Rani's case by reversing the earlier decision in Saptal Singh's case and further question as to whether the doctrine of "pay and Recover" theory, which is applied till then, by directing the insurer to satisfy the award and to recover the amount from the insured even though the insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench Judgment of our High Court. As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passenger travelling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon"*

20. 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 respondents1 to 5/claimants. Following the dictum laid down in the decided cases *referred by the Insurance Company, the Insurance Company cannot not be made liable in respect of unauthorised passenger. Owner of the vehicle alone is liable to pay compensation to the claimants."*

19. In ***M/s.United India insurance Co. Limited., Namakkal vs. Lakshmi and others (C.M.A.No.3174 of 2021)*** in which paragraph No.11, this Court referred the judgment of the Hon'ble Apex Court in ***United India Insurance Company Limited vs. Suresh K.K. And another [(2008) 12 SCC 657]*** dealt with the question regarding that a person, who was travelling in a capacity other than the owner of the goods and held that the insurer would not be liable and it is observed in paragraph 9 and 10 as follows:

"9. The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner of the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Court is as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a

person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act 54 of 1994 was to widen the scope of the liability of the insurance company.

10. It is now well settled that the term "any person" envisaged under the said provision shall not include any gratuitous passenger. (National Insurance Co. Ltd., vs. Baljit Kaur) If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of the policy."

20. The judgments referred by the learned counsel for the appellant is applicable only to the 'Act Policy'. However, the appellant failed to examine the Officer of the insurance company to establish that

the policy issued to the first respondent did not cover third-party risk. The policy issued to the first respondent has been marked as Ex.P4 which is the GCV (goods-carrying vehicle) public carrier liability policy. Upon clarification regarding the nature of policy, it was revealed that this policy provides protection to third party against legal liabilities arising from the accident involving the insured vehicle, including bodily injury, death to a third party or property damage. Therefore, the argument advanced by the learned counsel for the appellant is that the policy did not cover third party risk is unsustainable and there is no ground to interfere with the order of the Tribunal. Hence, the Civil Miscellaneous Appeal is liable to be dismissed. The Point Nos.1 and 2 are answered accordingly.

21. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(A.D.J.C.,J .) & (R.P., J.)
17.07.2025

Index : Yes / No
NCC : Yes / No

RM

To

1. The Additional District Court (FTC),
Motor Accident Claims Tribunal,
Tenkasi.

Copy to

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

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

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