

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19..02..2009

CORAM

THE HON'BLE Mr. JUSTICE S.PALANIVELU

C.M.A.No.632 of 2003

The New India Assurance Co. Ltd.,
Hosur

... Appellant/IInd Respondent

Vs.

1. Mrs. Loganayagi
2. Minor. Sivanathan
rep.by mother and next friend
Loganayagi
3. M. Narasimmappa
4. Chinnasamy alias Gurrappan
5. Saroja
R3-set exparte

... Respondents/Petitioners 1 and 2
and Respondents 1,3,and 4

This civil miscellaneous appeal has been filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 29.11.2002, made in MCOP.No.392 of 2002 on the file of the Motor Accidents Claims Tribunal (Additional Special Court) Dharmapuri District at Krishnagiri.

For Appellant : Mr. Padmanabhan
for Mr.C. Ramesh Babu

For Respondents: Mr.D. Shivakumaran [for R1 & R2]
Mr.M. Sriram [for R4 & R5]

J U D G M E N T

1. The allegations contained in the claim petition are as follows:

The deceased Murugan was a contractor dealing with stones for buildings and constructions. The first respondent is the owner of the tractor and trailer bearing Registration Nos.TN-29-Y-3200 and TN-29-Y-4206 respectively. On 08.11.2001 the first respondent loaded stones in the trailer and the deceased was travelling in the trailer as contractor. It was driven by one Seenivasan and due to his negligent driving, the vehicle capsized, by means of which, Murugan fell down and by fall of stones over him, he died at the spot. The deceased was contractor by profession and he was supplying building materials on contract basis. He was also having agricultural lands and houses and was also building houses on contract basis and he was earning not less than Rs.10,000/- per month and spending about Rs.7,000/- to his family. He was aged about 28 years at the time of accident and the first and second petitioners are his wife and minor son and third and fourth respondents are his parents. Hence a sum of Rs.15 lakhs is

prayed for as compensation.

2. In the counter filed by the second respondent, the following are stated:

The tractor and trailer were insured with the second respondent for the period from 10.11.2000 to 9.11.2001. The deceased was travelling in the tractor and trailer as an unauthorised passenger in violation of policy conditions. The tractor and trailer are for agricultural purposes only. But they were used for commercial purpose by carrying stones to others. Hence the second respondent is not liable to indemnify the first respondent. The avocation and income of the deceased as mentioned in the petition are denied. The respondents are not liable to pay compensation. The claimants have to move for proper remedy only under Workmen's Compensation Act. The driver of the tractor is also not having valid licence. The compensation claimed is excessive. The petitioners cannot claim more than 9% of interest as per law. Hence the petition has to be dismissed.

3. After analysing the materials on record as well as oral evidence, the Tribunal concluded that due to the rash and negligence driving of the driver the accident took place, that he had got valid licence and the claimants are entitled for a sum of Rs.6,71,500/- as compensation from the respondents whose liabilities are joint and several.

4. Mr. Padmanabhan, learned counsel for the appellant would strongly contend that the tractor and trailer were not utilised for agricultural purpose at the time of accident, that the said vehicles could not be utilised for any purpose other than agricultural purposes and that the deceased was not covered by the contract between the insured and the insurer and hence the insurance company is not liable to indemnify the owner of the vehicle as policy conditions were violated.

5. Arguing on the other side of the coin, Mr.D. Shivakumaran, learned counsel for the respondents 1 & 2 would submit that there are ample evidence on record to show that the tractor and trailer were used for agricultural purposes as transpired from the oral evidence and under law the deceased, whatever be his capacity, was also covered by the Contract and the award passed by the Tribunal is in order.

6. To find out whether the vehicles were utilised for agricultural purposes, the evidence on record have to be dissected. A glance of F.I.R. does not show that the vehicles were utilised for agricultural purposes. However, it is stated therein that Murugan, travelling by the tractor and trailer as a load-man, died in the accident. It is also mentioned that stones were loaded in the trailer in a nearby quarry. There could be no quarrel to a proposition that tractors and trailers have only to be used for agricultural purposes and not for other unless they were registered for other purposes. While discussing this aspect with reference to the definitions of "tractor" and "trailer" as defined in the Motor Vehicles Act as well as the liability of the insurer to pay compensation if any

contingency arises, the Full Bench decision of the Supreme Court in 2004(2) TN MAC 123 (SC) [National Insurance Co., Ltd., v. V. Chinnamma & Others] has held by referring to earlier land mark judgments of the Apex Court on this point and finally concluded as follows:

"13. Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "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 carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "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".

14. The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle".

15. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise."

7. An identical matter with same set of facts and issue when came up before the Division Bench of this Court in a case reported in 2005(1) TN MAC 485 (DB) [New India Assurance Company Limited v. Thilliammal and others], it has been decided that since the accident has taken place during the course of the employment, as per the relevant clause of the policy, the insurer cannot escape from his liability. The relevant portion of the Judgment goes thus:-

"8. Since the appellant Insurance Company is not disputing the fact that the deceased was a loadman engaged by the third respondent/owner of the vehicle, and the accident took place during the course of his employment, as rightly pointed out by the learned counsel appearing for the third respondent/owner of the vehicle, in our considered opinion, the appellant Insurance Company is liable to pay the compensation for the death of the deceased Arumugam in view of the Clause 4 of the General Exceptions to the policy, whereunder the liability of the Insurance Company is not excluded with reference to the death or bodily injury of any person, who is a passenger or governed under the contract of employment."

8. In the above said case, the deceased was travelling in a tractor as load-man and in the accident he died, the Tribunal anchored liability upon the Insurance Company and on appeal this

Court confirmed the award by observing as aforementioned, repelling the contentions of the Insurance Company, that the deceased was only a load-man travelling as an unauthorised passenger and that he is a stranger to the Insurance Policy and therefore the Insurance Company is not at all liable to pay the compensation and only the owner of the vehicle has to pay the compensation.

9. As far as the facts of the present case are concerned, even though it is not admitted by the appellant that the deceased was load-man, the said aspect is very much available in the F.I.R., which emerged immediately after the accident. P.W.1, wife of the deceased would say that the deceased was a stone cutter and also building contractor, besides he possessed agricultural lands and so earning a sum of Rs.10,000/- per month. An independent witness P.W.2 claims that he went to Murugan to place orders for granites and Murugan was going to load the stones for construction of well for the vehicle owner and the accident occurred. Whatever be the evidence of P.W.2, it remains on record unrebutted even though he has been cross examined by the Insurance Company. In his cross examination no specific denial is available as to the factor that Murugan was on the trailer for the duty assigned by the vehicle owner. There is no independent evidence on the side of the Insurance Company to show that the purpose for which the vehicle was used, was a commercial one. In the absence of any material on record to show that the vehicle was utilised for some other purpose, on the strength of the available evidence it has to be necessarily be held that the vehicle was used for agricultural purpose viz., construction of well, for the vehicle owner.

10. There is no impediment to observe that either as a load-man, or can he be termed to be a representative of the vehicle owner, the deceased was travelling by the vehicle at the time of accident. In this context, the decisions of the other High Courts are also relevant. A Full Bench of Madhya Pradesh High Court in a decision in 2008 ACJ 1043 [Bhav Singh v. Savirani and others], has held, referring the following decision of the Supreme Court on the subject. The operative portion of the Full Bench decision with extraction of Supreme Court decision is as follows:-

"9. This position of law has been clarified by Apex Court in National Insurance Co. Ltd., v. Prembai Patel, 2005 ACJ 1323 (SC). The relevant portion of the judgment of the Supreme Court in Prembai Patel's Case (supra) from para 12 of the judgment is extracted below:

Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both "any person" or "passenger". An employee of owner of

the vehicle like a driver or a conductor may also come within the purview of the words "any person" occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act.

10. Sub-Section (5) of Section 147 of the Act, however provides that notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under Section 147 of the Act shall be liable to indemnify a person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or classes of persons. Thus, if the policy of insurance covers any liability in addition to the liability under section 147(1) of the Act, the insurer will be liable to indemnify the insured in case of any liability not because of the provisions of sub-section (1) of section 147 but because of the terms and conditions of contract of insurance between the insurer and the insured. Therefore, if the contract of insurance provides for a liability to a passenger or to an employee other than the liabilities provided under Sub-section (1) of Section 147 of the Act, the insurer would be liable to indemnify the insured against such liability."

11. Learned counsel for the claimants also garnered support from a Division Bench decision of the Punjab and Haryana High Court, in 2008 ACJ 588 [Oriental Insurance Co. Ltd., v. Vijay Singh and Others] wherein it is held that a deceased travelling along with fodder in a tractor-trolley hired by him, met with an accident and got injured and the insurance company cannot avoid its liability on the ground that injured was sitting on the mud-guard and the tractor was being used for carrying a passenger in violation of the terms and conditions of the Insurance Policy. The operative Portions of the Judgment are as follows:

"4. ... In our opinion, the Tribunal has rightly relied upon the the Judgment of of the Supreme Court in National Insurance Co. Ltd., v. Baljit Kaur, 2004 ACJ 428 (SC). As noticed above, the tractor in question was being used for agricultural purposes and if the owner of the goods was sitting thereon, it cannot be said that

the same was not being used for agricultural purposes and if the owner of the goods was sitting thereon, it cannot be said that the same was not being used for agricultural purposes or the person travelling to watch the goods was a passenger on it. Madhya Pradesh High Court in Malkibai v. Badriprasad, 1996 ACJ 38 (MP), in almost identical facts, held as under:

"13. The next point that arises for determination in the case is as to whether the insurance company is liable to make good the loss. It is not in dispute that the motor tractor was insured for agricultural purpose and carrying the straw load even on hire would be a work for agricultural purposes. Nowadays after coming into force of the ceiling law in the country an owner of the tractor cannot sustain tractor only by working for himself, he can use the tractor for cultivating the land of others and for assisting in the agricultural operations of other cultivators and that would also be deemed to be an agricultural purpose.

14. If a tractor was being used for agricultural purposes in assistance even for hire of other cultivators, the insurance company cannot be allowed to say that the same was being used not for agricultural purpose.

15. Deceased Narsingh had gone along with the tractor for putting the load of maize-straw on the trolley. His presence in the trolley was necessary for loading and unloading the maize-straw and, therefore, it will be further deemed that Narsingh was working in the aid of agricultural purposes."

5. In view of the above discussion, we hold that the claimant-injured, who was merely accompanying his goods, cannot be termed to a passenger on the tractor in question."

12. The Madhya Pradesh High Court is of the opinion that according to the provision under Section 147 of the Motor Vehicles Act, as amended in the year 1994, the Insurance Policy would cover the risk of a third party and also the owner of the goods. Following the decision of the Supreme Court, the Full Bench has held that if sufficient materials are available to hold that the tractor and trailer were used for agricultural purposes and if a load-man travelled by the vehicle and sustained injuries, then the Insurance Company cannot escape from its liability.

13. Following the principles laid down by the Supreme Court in this regard and also considering the view taken by the other High Courts, this court is of the considered opinion that while a tractor and trailer were being utilised for agricultural purposes as shown in

this case and if the owner or his representative as load-man, travelled by the vehicle and in case he got personal injury or otherwise, then the Insurance Company is liable to pay compensation. It is held as such.

14. As far as the quantum of compensation as assessed by the Tribunal is concerned it appears slightly to be on the higher side. The Tribunal has fixed the monthly income at Rs.150/- per day for the deceased, had he been going for daily wages to cut the stones, his monthly income would be at Rs.4,500/- and after deducting 1/3rd i.e., Rs.1,500/- for his personal expenses, Rs.3,000/- could be taken as his contribution to his family and the dependency was assessed at Rs.6,12,000/- by taking into consideration Rs.36,000/- per annum and applying multiplier 17. A sum of Rs.25,000/- has been ear-marked for loss of consortium to the wife of the deceased; a sum of Rs.30,000/- has been awarded for loss of love and affection to the son and parents of the deceased (Rs.10,000/- each) and Rs.2,500/- and Rs.2,000/- have been granted for loss of estate and funeral expenses respectively. In total Rs.6,71,500/- has been awarded along with interest at the rate of 9% p.a.

15. In view of this Court, considering the evidence on record, Rs.120/- could be fixed as daily wages to the deceased, his monthly income comes to Rs.3,600/- and the dependency be Rs.2,400/- p.m., after deducting Rs.1200/- equal to 1/3rd of the said amount. The annual loss of income is Rs.28,800/- and if it is multiplied by 17, the total loss of income to the family comes to Rs.4,89,600/-. The conventional damages as fixed by the Tribunal Rs.59,500/- shall also be added and thus a sum of Rs.5,49,100/- has to be made available to the claimants and the parents of the deceased.

16. Out of Rs.5,49,100/- both the parents viz., 3rd and 4th respondents and the minor son, 2nd claimant are each entitled to Rs.75,000/- and the first claimant, wife is entitled for the balance amount of Rs.3,24,100/-. In all other respects, the award passed by the Tribunal shall hold good.

17. In fine, the Civil Miscellaneous Appeal is allowed in part with the above said modifications as to quantum of compensation. The appellant is entitled to withdraw the excess amount along with proportionate interest. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ggs

To
The Additional Special Judge,
Motor Accident Claims Tribunal,
Dharmapuri District at
Krishnagiri.

Copy to :
The Section Officer,
V.R.section, High Court, Madras.

+ 2 CC to Mr.C.Ramesh Babu, Advocate,SR.6864 & 7060

+ 1 CC to Mr.D.Shivakumaran,Advocate,SR.6967

C.M.A.No.632 OF 2003

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