

(1997) 02 MAD CK 0148
In the Madras High Court
Case No : L.P.A. No. 170 of 1993

Muthu Thangiah Thevar Rice Mill

APPELLANT

Vs

Mariyayee and Others

RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Citation : (1997) ACJ 919 : (1997) 1 LW 680

Hon'ble Judges : A.R. Lakshmanan, J;A. Raman, J

Bench : Division Bench

Advocate : G.R. Lakshmanan, for the Appellant; V.M. Ravichandran, for the Respondent

Final Decision : Allowed

Judgement

A.R. Lakshmanan, J.—Respondent Nos. 1 to 5 were served through court as early as on 16.12.1993 itself. Heard Mr. G.R. Lakshmanan, counsel appealing for appellant. Heard Mr. V.M. Ravichandran, counsel appealing for respondent Nos. 1 to 3 whose vakalath returned and has not been represented.

2. This appeal is directed against the order of the learned single Judge in C.M.A. No. 1033 of 1988 dated 3.3.1992 dismissing the appeal filed by the owner of the tractor on the ground that the owner of the tractor and trailer at the time of the accident has permitted the use of the tractor and trailer for a prohibited use for a purpose not permitted in the policy. Before the Tribunal objection statement was filed by the appellant herein denying two things, viz., (1) that the accident had not taken place due to the negligent driving of the driver but for the careless and negligent driving of the cyclist, and (2) that the owner of the tractor has given the tractor only to Karambakudi Panchayat for a public purpose of taking drinking water on an emergency basis and that he is not in the habit of hiring tractors and therefore, the owner of the tractor is not liable to pay any compensation but only the insurance company is liable to pay the same. The insurance company took the stand that under the terms of policy the tractor and trailer can be used for agricultural purpose and forestry purposes and at the time of accident the tractor

and trailer had not been used for such purposes and therefore the risk was not covered under the policy and therefore no liability could be fastened on it. The Motor Accidents Claims Tribunal, Pudukottai on a consideration of the entire materials on record and accepting the contention of the insurance company awarded a compensation of Rs. 34,000/- and directed the owner of the vehicle to pay the same. Aggrieved by the correctness of the award of the Tribunal, the owner of the tractor filed C.M.A. No. 1033 of 1988 which was also dismissed by the learned single Judge of this Court for the detailed reasons stated in the order. Admittedly the tractor and trailer had been used on hire for carrying water for Karambakudi Panchayat and that would not, however, fall within the permitted use of the tractor and trailer as either for agricultural or forestry purposes. As rightly pointed out by the learned single Judge, the purpose should have been in connection with the agriculture of the owner of the tractor or the trailer.

3. In this case, it is not disputed by the appellant that water was carried in the tractor and trailer not for any agricultural purposes, but for effecting supply to the residents of the panchayat and that too on hire of the tractor and trailer from the appellant. Such user, in our opinion, can hardly be characterised as for agricultural or forestry purposes. Thus, the use of the tractor and trailer by the appellant at the time of the accident cannot be brought either under permitted use or even the prohibited use on the facts of this case.

4. The result is that the insurance company cannot at all be made liable under the terms of the policy and since the owner of the vehicle has permitted the use of the vehicle for a purpose not provided in the policy, he alone is liable to pay the compensation. Both the Tribunal and the learned single Judge were therefore quite right in holding so. Therefore, we dismiss the appeal and confirm the order of the learned single Judge and the order of the Motor Accidents Claims Tribunal respectively. There will be no order as to costs.