(2011) 02 MAD CK 0457

In the Madras High Court

Case No : C.M.A. (MD) No. 71 of 2009 and M.P. (MD) No. 1 of 2009

The Branch Manager, The Oriental Insurance Co. Ltd. APPELLANT

Vs

Chitra and Others RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:
Constitution of India, 1950 — Article 142

Citation : (2011) 02 MAD CK 0457

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : K. Bhaskaran, for the Appellant; N. Balakrishnan, for R1 to R5, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—Challenge in respect of the liability of the Appellant Insurance Company is made in this appeal to the award of Rs. 3,08,000/-, dated 21.12.2005 and made in MCOP No. 877 of 2003, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge)(FTC), Pudukottai.

2. The facts which giving rise to this appeal may be summarized as under:

That on 22.05.2002 at about 2.45 p.m., the tractor bearing registration No. TN-55/D-3764 belonging to the 6th Respondent herein was proceeding towards Ammapatinam on Sethu Road. When it was nearing Raghumath Nagar, the deceased Subburamu @ Subburaman had alighted from the tractor and was standing in front of SYN building. While so, the driver, who was on the steering wheel had suddenly moved the tractor in a rash and negligent manner and hit against the deceased Subburamu @ Subburaman, which resulted his instantaneously death on the spot. The deceased was working in AKS farm as agricultural coolie. On account of his death, the Claimants who are the wife, children, mother and the brother of the deceased had filed a claim petition in MCOP No. 877 of 2003, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge)(FTC), Pudukottai, claiming a sum of Rs. 10 lakhs towards the compensation.

3. The owner of the vehicle, who is the first Respondent, in the claim petition had not chosen to contest the claim as he remained ex-parte.

4. On the other hand, the Appellant Insurance Company being the 2nd Respondent, had alone contested the claim petition on the ground that since the deceased was travelling in the tractor bearing registration No. TN-55-D-3764 and he himself had invited the accident, while he was alighting from the moving vehicle, the Insurance Company not at all liable to pay the compensation.

5. Including the first Claimant, two witnesses were examined on behalf of the Claimants and during the course of their examination, five documents were marked. On the other hand, two witnesses were examined on behalf of the Appellant Insurance Company.

6. On appreciation of the materials available on record, the Motor Accidents Claims Tribunal had rejected the contention of the Appellant Insurance Company and proceeded to pass an award of Rs. 3,08,000/-directing the Appellant Insurance Company as well as the owner of the vehicle to pay this amount to the Claimants with interest @ 7.5% per annum. Challenging the award, after questioning the liability, the Insurance Company stands before this Court with this appeal.

7. Heard both sides.

8. Mr. J.S. Murali, the learned Counsel appearing for the Appellant Insurance Company, has adverted to that:

(1) The sitting capacity of the tractor is only one and the tractor bearing registration No. TN-55-D-3764 and the trailer bearing registration No. TN-55-D-3765 were covered with Kissan Packages Policy at the time of occurrence and that the passengers are not permitted to travel either in the tractor or in the trailer. Since the deceased was travelling in the tractor sitting on the mud-guard, when the occurrence was taken place, the Appellant Insurance Company could not be made liable to pay the compensation to the Claimants.

(2) He has also contended that since the driver of the tractor had committed wrong, the owner of the vehicle, who is the 6th Respondent and the Appellant is jointly liable to pay the compensation to the Claimants for the wrong committed by the driver of the tractor, but the Insurance Company cannot be directed to indemnify the 6th Respondent.

(3) He has also maintained that at the time of accident, the tractor was not fitted with the trailer.

(4) He has also contended that the FIR, Ex.A1, would go to show that a case in Crime No. 90 of 2002 was registered on the file of the Manamelkudi Police Station u/s 304-A based on the complaint alleged to have been lodged by one

Subramanian, S/o. Chellaiya Konar.

(5) The FIR Ex.A1, is the earliest document, which discloses the nature of occurrence as well as the details of the vehicle. It reveals that on 22.05.2002, the Complainant, Subramanian, the deceased Subburamu @ Subburaman and Kulandaivelu were working in AKS farm as coolie workers and that they had been to Manamelgudi at 2.45 pm. When they were proceeding in front of SYN building at Ragumath Nagar, the deceased Subburamu @ Subburaman had asked the driver to stop the tractor and was also trying to alight from the tractor. Before the deceased could alight from the tractor, the driver had suddenly moved the tractor. While so, the deceased had lost his balance and hit against the back wheel of the tractor and fallen down. When the Complainant Subramanian and other inmates of the tractor including the driver one Kulandaivelu had lifted the deceased, the blood was dripping from his ear and nose. On seeing this, Kulandaivelu and the driver of the tractor had started running from the place of occurrence. It also reveals that the deceased Subburamu @ Subburaman had succumbed to injury instantaneously on the spot.

9. In this connection, the learned Counsel appearing for the Appellant Insurance Company would submit that FIR, Ex.A1, itself would substantiate the fact that while getting down from the tractor, the deceased caught in the back wheel and succumbed to injury. When such being the case, the Appellant Insurance Company cannot be mulcted with the liability of indemnifying the owner of the vehicle and on the other hand, the 6th Respondent, who is the owner of the vehicle alone is liable to pay the amount.

10. In order to substantiate his arguments, he has placed reliance upon the following decisions:

1. Sita Devi and Ors. v. Dharambir and Ors. reported in III (2007) ACC 692.

2. Branch Manger, National Insurance Company Ltd. v. Ganapathi and Ors. reported in AIR 2007 (NOC) 246 (MAD) 2006.

3. Oriental Insurance Co. Ltd. v. D. Laxman and Ors. reported in 2007 (2) ABR (NOC) 310 (KAR) : AIR 2007 Kar 159 : 2007AIHC 501.

4. Oriental Insurance Co. Ltd., v. Brij Mohan and Ors. reported in IV (2007) ACC 254 (SC).

5. Bhav Singh Vs. Smt. Savirani and Others, .

6. National Insurance Company Ltd. v. Durga Prasad and Ors. reported AIR 2008 (NOC) 1437 (MP).

7. National Insurance Co. Ltd. Thanjavur v. Pavunammal reported in AIR 2009 (NOC) 616 (MAD).

8. IFFCO-TOKIO General Insurance Co. Ltd. v. Sulochana and Ors. reported in IV 2009 ACC 200.

9. United India Insurance Co. Ltd. v. Smt. Anguri Devi and Ors. reported in 2010 (1) TAC 136 (MP).

11. In Sita Devi and Ors. v. Dharambir and Ors. reported in III (2007) ACC 692, it is held that:

13.A tractor is not a goods vehicle. Section 2(44) defines ''tractor'' as under:

"tractor" means 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. It is, thus, clear that a tractor is not meant to carry any passenger or to carry any load. A trailer has been defined in Section 2(46) as under:

''Trailer'' means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.

12. In Branch Manager, National Insurance Company v. Ganapathy and Ors., reported in AIR 2007 (NOC) 246 (MAD): 2006 A I H C 3578 , the deceased had fallen from the tractor and lost his life. The plea of the claimants that the deceased was travelling as cleaner. The learned single Judge of this Court, has observed that the plea that the deceased was travelling as a cleaner was not substantiated by producing valid documentary evidence. Ultimately, the learned single Judge of this Court held that it could be said that the deceased was travelling as gratuitous passenger and hence, the award of the Tribunal fastening the liability on Insurance Company to indemnify the owner for the death of deceased is liable to be set aside and therefore, the owner of the tractor held liable to pay the compensation.

13. In Oriental Insurance Co. Ltd., v. Brij Mohan and Ors. , reported in IV (2007) ACC 254 (SC) , it was held that the Offending tractor insured for agricultural purpose, however trolley attached to tractor not insured. The Labourer engaged for digging earth to be carried on the tractor-trolley attached to the tractor. The trailer attached with the tractor was not insured. Since the earth carried on the trolley was for the purpose of manufacturing of brick-kiln, it was found that the tractor and the trolley were not used for agricultural purpose. In this circumstance, the Apex Court has held that the Insurance Company is not liable to pay the compensation. However, considering the nature of injury and the poverty of the injured, exercising its extraordinary jurisdiction under Article 142 of the Constitution of India, the Apex Court has directed the Insurance Company to satisfy the award and realize the same from the owner of the tractor and the trolley.

14. In National Insurance Co. Ltd., v. Durga Prasad and Ors. , reported in AIR 2008 (NOC) 1437 (M.P): 2008 (4) ABR (NOC) 694 (M.P) , also the liability of the insurer was questioned. The deceased was travelling sitting on bonnet of tractor from where he had fallen down and died. The tractor was insured covering the risk of driver, owner and third party. Passenger or labourer travelling in such

vehicle could not be treated as third party for the purpose of insurance unless their risk is covered under policy by receiving additional premium in this regard. According to such policy, neither additional premium for any passenger or labourer was paid nor the same was received by insurer. In this circumstance, it was held that the liability of the passenger cannot be saddled with the insurer.

15. In National Insurance Co. Ltd., Thanjavur v. Pavunammal , reported in AIR 2009 (NOC) 616 (MAD) also it is held that the insurer not liable to pay compensation for the tortious act committed by the owner of the vehicle.

16. In an another decision in United India Insurance Co. Ltd., v. Smt. Anguri Devi and others , reported in 2010 (1) T.A.C 136 (M.P) , the deceased was travelling in a tractor which turned turtle. The tractor was insured for agricultural purpose. It is also the case of the claimants that the deceased was died due to rashness and negligent driving of the tractor driver, but the Tribunal has awarded a sum of Rs. 3,60,000/-after fixing the liability on the driver, owner and insurer. It was held that admittedly the tractor was insured for agricultural purpose and not for carrying passenger. Under this circumstance, it was held that the insurer is not liable to pay compensation for the person who suffers injuries while travelling as passenger in the tractor.

17. On coming to the instant case on hand, it is established that the deceased Subburamu @ Subburaman was travelling in the tractor. It is also established that at the time of accident, the trailer was not attached with the tractor. The evidence of PW2 cannot be tagged with credit worthiness because the man, who lodged the complaint himself was travelling in the tractor. The evidence of PW2 seems to be artificial and cooked up for the purpose of getting compensation to the claimants from the insurance company.

18. On the basis of the materials available on record and other circumstances, it is unambiguitively established that the deceased was travelling in the tractor and while he was trying to get down from the tractor, the driver had moved the vehicle at fast and hence, the deceased caught himself in the back wheel of the tractor and lost his life for which the Insurance Company cannot be held liable, on the other hand, the owner of the vehicle alone is liable.

19. In th result, the appeal is allowed. The finding of the Tribunal with regard to the liability of the Appellant Insurance Company to pay the award is set aside. It is open for the Respondents/claimants 1 to 5 to claim the award amount from the 6th Respondent, who is the owner of the tractor. Consequently, connected Miscellaneous Petition is closed. No costs.

