

Divisional Manager, Vs. 1.P.irulayee

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Court : Chennai

Decided On : Jan-07-2013

Judge : P.Devadass

Appellant : Divisional Manager,

Respondent : 1.P.irulayee

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

07. 01/2013 CORAM THE HONOURABLE MR.JUSTICE P.DEVADASS C.M.A.(MD) No.261 of 2010 and M.P.(MD) No.1 of 2010 Divisional Manager, New India Assurance Co. Ltd, 30, Samiyannan Pillaiyar Kovil Street, Virudhunagar. ... Appellant/Respondent No.2 Vs. 1.P.Irulayee 2.P.Rasu ... Respondents 1 & 2/ Petitioners 3.D.Raman ... 3rd Respondent/ Respondent No.1 Prayer Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.48 of 2007 dated 30.07.2008, by the Motor Accidents Claims Tribunal, (Sub Court), Virudhunagar. !For Appellant ... Mr.A.K.Baskarapandiyan ^For Respondents 2 and 3... Mr.J.Suresh Kumar for Mr.N.V.Suresh Kumar For 3rd Respondent ... No Appearance ***** :JUDGMENT 1 The New India Assurance Co. Ltd., the insurer of the vehicle involved in the accident disputes its liability to pay the compensation awarded.

2. On 02.04.2007, one Pitchai travelled in the Tractor TN 6.9949, which pulled the Tanker TN 6.C 4168.Due to the rash and negligent driving of the driver, accident

took place. Pitchai died. His dependants claimed compensation. They were awarded Rs.2,00,000/-.

3. The learned counsel for the appellant would contend that actually the deceased travelled in the mud guard of the Tractor. He is not covered under the policy. So, the company is not liable to pay the award amount.

4. The learned counsel for the claimants/ respondents 1 and 2 would contend that the deceased travelled in the tractor as an employee. Employees are covered in the policy. Hence, the company is liable.

5. I have anxiously considered the rival submissions, perused the materials on record and the impugned award of the Tribunal.

6. The accident was on 02.04.2007. In the accident deceased Pitch died. Admittedly, at the time of accident, the insurance was in force with the appellant. There is no acceptable evidence to show that the deceased travelled on the mud guard. R.W.1, a staff of the insurance company admits that there is coverage for the employee. The deceased went in the vehicle as an employee.

7. In NEW INDIA ASSURANCE COMPANY Ltd., v. GOVINDARAJ AND ANOTHER (2010(1) TN MAC 231), this Court held that when once the Insurer accepted that there is premium for an employee, there is no bar for the employee to travel along with the driver of the vehicle. Whether the deceased travelled in the Tractor or in Trailer is immaterial when the premium was paid to cover the employee, in such a case, the insurer is liable to pay the compensation amount.

8. Considering the above aspects, the appellant is bound to indemnify the vehicle owner. Thus, the Tribunal has rightly held that the Company is liable to pay the award amount.

9. In the result, the appeal is dismissed. The award of the Tribunal is confirmed. The appellant shall deposit the balance amount within four weeks from the date of receipt of a copy of this Judgment. On such deposit, respondents 1 and 2 are permitted to withdraw their respective share of amount, less amount, already withdrawn. No costs. Consequently, connected M.P.(MD) No.1 of 2010 is

dismissed. sj To The Motor Accidents Claims Tribunal, (The Subordinate Judge),
Virudhunagar.

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