IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-10-2015

Coram

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. No. 1418 and 1419 of 2011
and
M.P. Nos. 1 and 1 of 2011

1. United India Insurance Co., Ltd.,
   Rep. by its Branch Manager
   Branch Office, R.P.R. Complex
   Bye-pass Road
   Now at Government Hospital
   Dharmapuri - 636 701

2. United India Insurance Co., Ltd.,
   Rep. by its Branch Manager
   No.2/150, First Floor
   Gandhi Nagar
   Central Theater (near)
   Krishnagiri - 635 001 .. Appellants in both the appeals/ Respondents 2& 4 in both the Appeals

Versus

1. Sigamani
2. Mookkammal
3. Saraswathi
4. P. Kumaran
(RR3 & 4 are exparte in lower court) .. Respondents in CMA No. 1418 of 2011/ Petitioners 1 & 2 and Respodents 1 & 3

1. Manivel
2. Radhika
3. Minor - Mayakannan
4. Minor - Magendiran
5. Saraswathi
6. P. Kumaran
(RR5 and 6 are set exparte lower court) .. Respondents in CMA No. 1419 of 2011/Petitioners 1 to 4 and in respondents 1 & 3

CMA No. 1418 of 2011:- Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 28.07.2010 passed in M.C.O.P. No. 515 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court) at Dharmapuri

CMA No. 1419 of 2011:- Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 28.07.2010 passed in M.C.O.P. No. 518 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court) at Dharmapuri

For Appellants : Ms. R. Srividhya in both the cases

For Respondents: Mr. M. Selvan for RR1 and 2 in CMA No. 1418 and RR1 to 4 in CMA No. 1419 of 2011

COMMON JUDGMENT

The insurance company has come forward with these appeals questioning the correctness of the award passed by the Tribunal in so far as it fastens the liability on them to pay compensation to the claimants.

2. C.M.A. No. 1418 of 2011 arise out of the award passed by the Tribunal in MCOP No. 515 of 2008. M.C.O.P. No. 515 of 2008 has been filed by the respondents 1 and 2 in this appeal. According to the claimants/respondents 1 and 2, on 29.05.2008 her daughter Shreena, aged 15 years, along with others were travelling in the lorry bearing Registration No. TN 22 Y 0618 to Hogenekkal to attend the 5th day death ceremony of her relative. When the vehicle was proceeding near Dharmapuri to Harur road, near the Solaikottai Village bridge, the lorry driven by another lorry bearing Registration No. TN 23 B 2455 was driven by its driver in a rash and negligent manner hit against the lorry in which the daughter of the claimants was travelling. In the impact of the collusion, the minor daughter of the claimants sustained fatal injuries and died few hours of the accident at Government Hospital, Dharmapuri. The minor daughter, who died in the accident, is the only daughter born to the claimants/respondents and on her death, they have lost her love, affection and compassion. Therefore, for the death of the minor girl child, the claimants have filed the claim petition claiming compensation of Rs.5,00,000/-.

3. C.M.A. No. 1419 of 2011 arise out of the award passed by the Tribunal in MCOP No. 518 of 2008. M.C.O.P. No. 518 of 2008 has been filed by the respondents 1 to 4 in this appeal. According to the claimants/respondents 1 to 4, in the accident that took place on 29.05.2008, their father Raji, aged 45 years, sustained fatal injuries and died on the spot. On the death of their father, the claimants/respondents 1 to 4 herein have lost their bread winner. The deceased Raji was doing agricultural work besides doing cattle business and was earning Rs.3,000/- per month. Therefore, for the death of the deceased, the claimants/ respondents 1 to 4 have filed the claim petition claiming compensation of Rs.8,00,000/-.

4. Both the claim petitions were resisted by the insurance company by specifically contending that the deceased in the claim petitions have travelled along with 50 persons in the lorry bearing Registration No. TN 32 Y 0618 as paid passengers. The owner of the vehicle bearing Registration No. TN 32 Y 0618 has violated the terms and conditions of the policy by carrying more than 50 persons as passengers in the lorry, which is purely meant for carrying only goods. The vehicle was insured as a "goods carrier" only and the vehicle was insured as "goods carrier".

While so, the insurance company cannot be mulcted with liability to pay compensation to the claimants. It was further contended that the drivers of the respective lorries did not possess valid driving licence to drive the goods carrier. The amount of compensation claimed by the claimants is excessive especially when there is no documentary proof made available to show the income of the deceased Raji.

5. The Tribunal, upon consideration of oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 23 B 2455, therefore, the Tribunal brushed aside the contention of the insurance company that the deceased travelled along with 50 others in the goods carriage vehicle and therefore, they cannot be fastened with any liability to pay compensation. As regards compensation, the Tribunal, taking note of the postmortem report of the deceased minor girl Shreena found that she was aged 15 years at the time of accident. The Tribunal therefore considered the age of the father of the deceased minor girl, being 37 and age of the mother being 30, applied multiplier '18'. The Tribunal fixed the notional income of the deceased minor girl as Rs.15,000/- per year and awarded Rs.2,70,000/- towards loss of income. The Tribunal also awarded Rs.15,000/- towards loss of love and affection, Rs.2,000/- towards transportation and Rs.5,000/- towards funeral expenses. Totally, the Tribunal awarded Rs.2,92,000/- to the claimants in MCOP No. 515 of 2008, which is under challenge in CMA No. 1418 of 2011.

6. As regards the compensation to the claimants in MCOP No. 518 of 2009, the Tribunal taken the age of the deceased Raji as 45 on the basis of the postmortem certificate. As there was no proof for income, the Tribunal fixed his monthly income notionally at Rs.3,000/-. After deducting 1/3rd amount towards his personal expenses and by applying multiplier '16', the Tribunal arrived at a sum of Rs.24,000/- as yearly income. Resultantly, the Tribunal awarded Rs.3,84,000/- to the claimants towards loss of income. The Tribunal also further awarded Rs.15,000/- towards loss of love and affection, , Rs.2,000/- towards transportation and Rs.5,000/- towards funeral. Thus, a total sum of Rs.4,06,000/-.

7. The Tribunal, in both the cases, has directed the owner of the lorry bearing Registration No. TN 23 B 2455 namely Kumaran and United India Insurance Co., Limited, Krishnagiri to pay the compensation amount jointly and severally.

8. The learned counsel appearing for the appellant/insurance company would vehemently contend that the Tribunal erred in fastening the liability on the insurer of the lorry bearing Registration No. TN 23 B 2455. It is further contend that the deceased in both the cases have travelled in the lorry bearing Registration No. TN 22 Y 0618 along with 50 other persons, which is a goods carrier vehicle and therefore, there is a clear violation of the terms and conditions of the insurance policy. Therefore, when there is a violation of the terms and conditions of the insurance policy, the claimants are not entitled for payment of compensation. A gratitious passenger is not entitled

for payment of compensation and this settled proposition of law was ignored by the Tribunal. Further, the Tribunal failed to take into account the accident had taken place only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 22 Y 0618 in which both the deceased travelled along with others. This is fortified by Ex.P1, First Information Report which clearly indicates that the driver of the lorry bearing Registration No. TN 22 Y 0618 was negligent in driving the vehicle. While so, the Tribunal, contrary to the evidence available, fastened the liability on the driver of the vehicle bearing Registration No. TN 23 B 2455 without any valid evidence. At any rate, when there is head on collision between two vehicles, the Tribunal is only justified in fastening the liability in the region of 50% on the owner and insurance company of each of the vehicle. However, in the present case, the Tribunal fastened the liability only on the driver of the lorry bearing Registration No. TN 23 B 2455 and consequently directed the appellant to pay jointly and severally along with the owner of the vehicle to pay the compensation amount.

9. On the contrary, the learned counsel for the respondents/claimants would contend that the Tribunal categorically held, on appreciation of evidence, that it was the driver of the vehicle bearing Registration No. TN 23 B 2455 is responsible for the accident. The Tribunal, taking into account that the passengers travelled in the other vehicle bearing Registration No. TN 22 Y 0618 are considered to be third parties, has rightly granted compensation to the claimants.

10. I heard the counsel for both sides and carefully examined the materials placed on record, including the award passed by the Tribunal in both the claim petitions.

11. At the outset, the appellant-insurance company is not questioning the quantum of compensation awarded by the Tribunal, but only challenges the award in so far as it fastens the liability on them to pay the compensation amount jointly and severally along with the owner of the vehicle.

12. Admittedly, there was a head on collision between two lorries which resulted in the death of the legal heirs of the claimants. It is the specific contention of the appellant that the driver of the lorry bearing Registration No. TN 23 B 2455 has not driven the vehicle in a rash and negligent manner, however there is no evidence let in to prove the same. The appellant relied on the first information report to contend that the award passed by the Tribunal is materially irregular and they are not liable to pay the compensation amount. It is the further contention of the appellant that the deceased in both the cases have travelled as a gratutious passengers in a goods carrier vehicle bearing Registration No. TN 32 Y 0618 along with 50 others thereby they have contravened the terms and conditions of the insurance policy. Therefore also, the appellant questions the award passed by the Tribunal in so far as it fastens the liability on them.

13. Admittedly, both the vehicles, which collided against each other in the accident that took place on 29.05.2008, are insured with the appellant - insurance company. It is true that in the first information report, it was indicated that the accident took place because of the rash and negligent driving of the driver of the lorry bearing Registration No. TN 32 Y 0618 in which the deceased travelled. However, to substantiate the same, there is no evidence made available by the appellant insurance company. In fact, on behalf of the appellant company, RW1 and 2 were examined, who are employees of the insurannce company. In their chief examination, they have stated that on enquiry, they came to know that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 32 Y 0618 in which the deceased, along with 50 persons travelled. However, in the cross-examination, they have clearly admitted that they have not witnessed the accident. In the cross examination, RW1 also admitted that when it is not known as to whether the driver of the lorry bearing Registration No. TN 32 Y 0618 had driven the vehicle in a rash and negligent manner, then it can be construed that the passengers travelled in the said lorry are third parties in so far as the lorry bearing Registration No. TN 23 B 2455. This was also clearly pointed out by the Tribunal in para No.9 of the award to hold that the accident took place due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 23 B 2455 and the passengers travelling in the vehicle bearing Registration No. TN 32 Y 0618 could be construed as third parties as per the terms and conditions of the insurance policy governing the vehicle bearing Registration No. TN 23 B 2455.

14. No doubt, there was a head on collision in which two lorries collided against each other. Even though it is admitted that the deceased travelled in a goods carrier vehicle as a gratitious passengers, when there is no proof regarding the rash and negligent driving on the part of a particular vehicle, the Tribunal ought to have held that both the drivers of the lorry have contributed and/or responsible for the accident. Even though an attempt was made by the insurance company by examining RW1 and RW2 to depose against the driver of the lorry bearing Registration No. TN 32 Y 0618, in which the deceased travelled, they could not support the claim of the insurance company in the cross-examination by deposing that they have not witnessed the accident and their evidence is only hear-say. Therefore also, the Tribunal is not justified in fastening the entire liability on the driver of one of the lorries, bearing Registration No. TN 23 B 2455, instead, the Tribunal ought to have held that both the lorries have contributed to the accident and the accident took place due to the negligence, rash and reckless driving on the part of the driver of both the vehicles. The first information report only prima facie prove that there was some amount of negligence on the part of the driver of both the lorries and based on the first information report, it cannot be held that the driver of a particular vehicle is the cause for the accident in entirety. Therefore, I am of the view that the compensation amount can be fastened at the rate of 60% on the driver of the lorry bearing Registration No. TN 23 B 2455 and 40% on the part of the driver

of the lorry bearing Registration No. TN 32 Y 0618, in which both the deceased travelled.

16. Accordingly, both the Civil Miscellaneous Appeals are partly allowed holding that the appellant insurance company is liable to pay only 60% of the compensation amount determined by the Tribunal in both the cases and the balance 40% of the compensation amount has to be paid by the owner of the vehicle namely Kumaran. No costs. It is made clear that 60% of the compensation amount together with interest as determined by the Tribunal shall be deposited by the appellant insurance company within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimants are entitled to withdraw the compensation amount as apportioned by the Tribunal. It is also made clear that the insurance company is at liberty to withdraw excess amount, if any, deposited by them with accrued interest. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rsh

To

The Motor Accident Claims Tribunal
(Additional District Judge)
Fast Track Court
Dharmapuri

Copy to

The Section Officer
VR Section,
High Court, Madras

2 ccs to M/s.R. Sreevidhya, Advocate, SR. 58535, 58536
2 ccs to Mr.M. Selvam, Advocate, SR. 58472

CMA Nos. 1418 & 1419/2011

PA (CO)
kk 10/3