IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3255 of 2011
& M.P.No.1 of 2015

United Insurance Company Ltd.,
rep. by its Manager,
448-A Dr.Nanjappa road,
Coimbatore-18. .. Appellant/3rd respondent

Versus

1.Kantha Ruban ..1st Respondent/Claimant
2.A.Kalaiyarasi ..2nd Respondent/2nd Respondent

(2nd respondent set exparte in the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2010 made in M.C.O.P.No.2347/2003 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Krishnagiri.

For Appellant : Ms.R.Sree Vidhya

For respondents : Mr.K.Selvaraj for R1
R2 Exparte before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the Insurance Company, is directed against the correctness of the impugned award dated 18.09.2010 made in M.C.O.P.No.2347/2003 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Krishnagiri.

2.Learned counsel appearing for the appellant/Insurance Company would submit that the claimant, who has stated in the proof affidavit that he was travelling in the vehicle as Coolie, has taken inconsistent stand in the claim petition stating that he was travelled as goods owner. Learned counsel would further submit that the inconsistent stand taken by the claimant clearly proves the case of the Insurance company that the claimant travelled as un-authorised passenger, therefore, he is not entitled for getting any compensation for the simple reason that the un-authorised passenger is not covered by any Insurance Policy. Therefore, the Tribunal has committed a serious error in fastening the liability on the Insurance Company, without considering the Full Bench Judgment of this Court in the case of Branch Manager, United India Insurance Company Ltd. Vs Nagammal and others reported in 2009 ACJ 865, wherein in para 31, clause iii, it has been held as follows:

> "(iii)Under Section 147, the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle".

The Tribunal has committed serious error in not following the above ruling of the Full Bench judgment of this Court. In the present case, both in the claim petition as well as in the proof affidavit, the claimant has never stated that he was travelling together with the goods. While fixing liability on the Insurance Company, he should be proved that he travelled along with the goods, but as the claimant was not accompanying with the goods at the time of accident, while travelling in the vehicle, the appellant/Insurance Company is not liable to pay any compensation. Hence, she prays for setting aside the impugned order passed by the Tribunal.

3.Learned counsel for the first respondent/claimant would submit that although the Insurance Company stated that the claimant was travelled as un-authorised passenger, the claimant was travelled in the vehicle for purchasing of cauliflower. As the driver of the vehicle driven the vehicle in a rash and negligent manner and dashed against the road side tamarind tree, the claimant sustained injuries. Therefore, the Insurance Company is liable to pay compensation to the claimant. Hence, he prays for dismissing the petition.

4.But this Court is not able to find any merits in the submission made by the learned counsel appearing for the first respondent/claimant to support the impugned order. The reason is that the claimant has stated in his claim petition that he had travelled as a goods owner, whereas in the Proof affidavit he has stated that he was travelled as a coolie. This could be seen from the findings given by the Tribunal in page No.16 of the typed set of papers. In view of the inconsistent stand taken by the claimant, unless he has proved that he travelled along with the goods, the vehicle involved in the accident is not covered by Insurance Policy and the first respondent/claimant is not entitled to get any compensation, by fixing liability on the Insurance Company. The Tribunal, without considering the inconsistent stand taken by the claimant and without considering the ratio laid down by the Full Bench Judgment of this Court reported in 2009 ACJ 865 (Branch Manager, United India Insurance Company Ltd. Vs Nagammal and others), directed the Insurance Company to pay the award amount. Therefore, the impugned order is not in accordance with law hence the same has to be set aside. Accordingly the impugned order dated 18.09.2010 made in M.C.O.P.No.2347/2003 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Krishnagiri, is set aside. Consequently, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected M.P. is closed. The Appellant/Insurance Company is permitted to withdraw the statutory deposit.

vga

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
(Additional District Judge), Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s. R. Sree Vidhya, Advocate, S.R.No.6282
+1cc to Mr.K. Selvaraj, Advocate, S.R.No.5592

VSN(CO)
EU(09/05/2016)

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