IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.180 of 2014

M/s National Insurance Company Ltd.,
35, North Usman Road
T.Nagar, Chennai 600 017 ..Appellant/2nd Respondent

-Vs-

1. Miss D.Lalitha ..1st Respondent/Claimant
2. Tmt.J.Kanniammal
3. Thiru Ismail Khan
4. M/s United India Insurance Co.Ltd.,
   No.70, NSC Bose Road
   Sowcarpet, Chennai 600 079 ..Respondents 2 to 4 / Respondents 1,3 and 4

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.08.2013 made in M.C.O.P.No.3789 of 2007 on the file of the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant :: Mr.J.Chandran

For Respondents :: Ms.Saleem Fathima for M/s R.Manoranjitham for R1
No appearance for R2 to R4

JUDGMENT

The National Insurance Company Limited, Chennai has questioned the impugned award passed by the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai in M.C.O.P.No.3789 of 2007 dated 16.8.2013 awarding a sum of Rs.39,000/- as against the claim of Rs.2,00,000/- to the injured claimant.

2. Mr.J.Chandran, learned counsel for the appellant submitted that the first respondent/claimant was travelling in a goods auto bearing Registration No.TN 04 S 1737 at C.B.Road near Stanley Nagar Railway Colony, opposite to Door No.86/55 with the goods, namely, sarees along with one another person. It is at this point of time, a share auto bearing Registration No.TN 04 S 3138, driven by its driver in a rash and negligent manner from the opposite direction, dashed against the goods auto, as a

result of which the gratuitous passengers sustained injuries. Although the First Information Report was filed as Ex.P1 along with the rough sketch, on perusal of Ex.P1, the Tribunal, finding that the driver of the goods auto bearing Registration No.TN 04 S 1737 was charge sheeted by the police authorities for the offence under Sections 338, 337 of IPC (4 counts) and under Section 184 of the Motor Vehicles Act, has held that the appellant insurance company is liable to pay the compensation, as the insurer of the offending vehicle, for the injuries sustained by the injured and then recover the same from the owner, the second respondent herein without initiating separate proceedings. Adding further, he submitted that when the injured passenger herself has clearly admitted that she was a saree seller and travelled in the goods vehicle unauthorisedly, the insurance company is not liable to pay the compensation, because there is no insurance coverage for the gratuitous passengers. However, at the rate of Rs.2,000/- per percentage for 10% disability, the Tribunal has awarded a total compensation of Rs.39,000/-, under the following heads:-

Loss of Income	-	Rs. 3,000
Transport to Hospital	-	Rs. 3,000
Extra Nourishment	-	Rs. 3,000
Damage to clothing	-	Rs. 1,000
Medical expenses	-	Rs. 2,000
Pain and sufferings	-	Rs. 7,000
Permanent Disability	-	Rs.20,000
Total compensation		Rs.39,000

When the finding reached by the Tribunal is clear that the injured claimant travelled as a gratuitous passenger, the Tribunal ought not to have resorted to the 'pay and recover' principle, since the case is otherwise covered under sub-section (2) of Section 140 of the Motor Vehicles Act on the principle of 'no fault' liability, he pleaded.

3. In this context, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited v. Savitri Devi and others [(2013) 11 SCC 554].* For better appreciation, paragraph Nos.8 to 10 thereof are extracted below:-

> “8. After having gone through the award of the Claims Tribunal and the judgment and order passed by the learned Single Judge of the High Court, we are not able to understand as to how it has been found that the appellant Insurance Company can still be held liable to pay the amount of compensation as there has been a categorical finding by both the courts

recording that the vehicle in question was insured only as “goods carrying vehicle”. The custom of carrying barat in the village on the said truck will not be sufficient to hold the appellant Insurance Company liable to pay the amount of compensation. Admittedly, the appellant Insurance Company would not know unless the accident takes place as to for what purpose the vehicle in question was being used. The terms and conditions of the insurance policy are very clear and categorical and it creates a specific bar on carrying of any passengers, except the employees other than the driver, not exceeding six (6) in number, who should also come under the purview of the Workmen's Compensation Act.

9. The Specific case of the claimants was that the barat was being taken in the said open truck on 12.11.1996 when the accident had taken place. Thus, according to us, it clearly violates the terms and conditions of the policy.

10. Dealing with similar circumstance, this Court has held in National Insurance Co. Ltd. V. Bommithi Subbhayamma as under:

“9................ 20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

4. The learned counsel for the first respondent-injured also fairly submitted that the case is covered under sub-section (2) of Section 140 of the Motor Vehicles Act on the principle of 'no fault' liability.

5. Section 140 of the Motor Vehicles Act reads thus:

“140. Liability to pay compensation in certain cases on the principle of no fault. – (1) Where death or permanent disablement of any person has resulted from an accident

arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

6. A reading of sub-section (2) of Section 140 of the Motor Vehicles Act shows that the amount of compensation payable under the sub-section in respect of permanent disability of any person shall be fixed at Rs.25,000/- alone on the principle of 'no fault'. In the present case, it is the admitted case of both parties that the injured was travelling only as a gratuitous passenger, therefore, her case can be brought only under sub-section (2) of Section 140 of the Motor Vehicles Act. But this aspect has been completely lost sight of by the Tribunal. Therefore, this Court, modifying the award of the Tribunal, applying the provision of Section 140(2) of the Motor Vehicles Act, keeping in mind that the injured was a gratuitous passenger and has suffered disability, which has been certified at 10%, is inclined to award a sum of Rs.25,000/- on the principle of 'no fault' along with Rs.5,000/- as costs. The same shall be deposited by the insurance company to the credit of M.C.O.P.No.3789 of 2007 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai, less the amount already deposited if any, within a period of two weeks

from the date of receipt of a copy of this order. It is made clear that if the amount is not deposited within this time, then interest shall accrue from the date of petition till the date of realization. On such deposit being made, it is open to the claimant to withdraw the same by moving appropriate application before the Tribunal. With this modification, the civil miscellaneous appeal is disposed of accordingly. Consequently, M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

+ 1 cc to Mr.J. Chandran, Advocate Sr.67328
+ 1 cc to Ms. R. Manoranjitham, Advocate Sr.67214

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KGK(CO)
EU 03.1.17