IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.11.2016

Judgment Pronounced on : 21.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.576 of 2009
and M.P.No.1 of 2009

The Divisional Manager,
United India Insurance Co. Ltd.
Cuddalore . .. Appellant/2nd Respondent

Vs.

1.Chinnasamy Gounder
2.Kasthuri Respondents 1 and 2/Claimants
3.Ayyavu .. 3rd Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.11.2006 made in M.C.O.P.No.149 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court-II, Tindivanam.

For Appellant : Mr.S.Arun Kumar
For Respondents : Ms.Rukmani K.Viswanathan
for Mr.P.B.Ramanujam [for R1 & R2]

JUDGMENT

The appellant before this Court is the Insurance Company, which is arrayed as the second respondent in MCOP.No.149 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.II, Tindivanam.

2. The claim was filed by the parents of one Deivasigamani, who lost his life while the tractor bearing Registration No.TN27-D-1834, in which he was alleged to have travelled, was driven rashly and negligently by his brother Senthilkumar, and met with a road accident on 13.03.2004 at about 10.00 p.m. in ECR Road junction. It is alleged that the driver of the vehicle attempted to avoid the cattle on the road and applied a sudden break, as a result on which the vehicle capsized killing Deivasigamani. The claimants had made a claim for Rs.25,00,000/- and the Tribunal has awarded Rs.3,25,000/- with 7.5% interest per annum.

3. The learned counsel for the appellant made a pointed submission: The vehicle in question was a tractor, that the victim was only a gratuitous passenger, and that the contract of insurance that the appellant had entered into with the owner of the vehicle did not cover any injury or death to a gratuitous passenger. This was raised by the insurance company in the counter filed before the Tribunal but was not pointedly discussed in the award and the award appeared to have proceeded on the basis that there was a valid cover for a gratuitous passenger and fixed the liability of the insurance company jointly and severally with the owner. He added that the award was passed on 30.11.2006 when the law on this aspect was settled in New India Assurance Co. Ltd., Vs. Asha Rani & Ors. [(2003) 1 SCC 237] and Oriental Insurance Co. Ltd., Vs. Brij Mohan & Ors [(2007) ACJ 1909] and placed before this Court the authority of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Kaushalya Devi & Others [(2008) ACJ 2144].

4. Relying on the authorities in Manager, National Insurance Co. Ltd., Vs Saju Paul & another [2013 ACJ 554] and National Insurance Co., Ltd., Vs Savitridevi & others [(2004)1 SCC 596], the learned counsel for the respondents submitted that even though the Hon'ble Supreme Court has held in Asha Rani case that unless premium is paid to cover gratuitous passenger insurance company cannot be made liable, yet, in all the authorities that were cited by both the parties to this litigation the Courts have either applied the doctrine of “pay and recover” and directed the Insurance Company to meet the liability at the first instance, or it has invoked Article 142 of the Constitution and proceeded to direct the Insurance Company to comply with the award.

5.The evidence on record indicate that the deceased was travelling in the tractor only as a gratuitous passenger. Admittedly there was no policy cover for indemnifying any liability arising out of death or injury to one who travels as a gratuitous passenger in the said vehicle. Given this setting, I find merit in the argument of appellant's counsel since the law on this aspect is crystallized. The impact of the ratio in Asha Rani, Baljit Kaur, Brij Mohan came to be considered by the Full bench of this Court in Branch Manager, United India Insurance Co. Ltd., Vs Nagammal [2009(1) CTC 1] where the Court had put to rest the difference in views as concerning the issue of insurer's liability for the death or bodily injury of a gratuitous passenger in a goods vehicle when it laid the course along the lines indicated by the Supreme Court in Baljit Kaur's case. Its effect is plain, simple and emphatic: After the decision in Baljit Kaur's case no Tribunal shall apply 'pay & recover' doctrine to cases of death or injury to a passenger in a goods vehicle. Baljit Kaur was decided on 06-01-2004 whereas the award now impugned before this Court was passed on 30-11-2006. It now does not require any extraordinary analysis to conclude that insurance company, the appellant, has proved the point it canvassed.

6.To conclude, I do find merit in the appeal and the same is allowed, however without costs. The appellant insurance company is freed of any liability that was fastened on it by the Tribunal and the claimants are free to recover the same solely from the owner the vehicle, the 3rd respondent herein, (first respondent before the Tribunal) who shall deposit the award amount within six weeks from the date of receipt of the copy of this order whereupon the claimants are free to receive the same forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:
The Motor Accident Claims Tribunal
Fast Track Court No.II
Tindivanam.

2 The Section Officer, VR, Section, High Court, Madras

+1cc to Mr.S. Arunkumar, Advocate, S.R.No.74884
+1cc to Mr.P.B. Ramanojam, Advocate, S.R.No.74750

ala(CO)
md(06/03/2017)