BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.1046 of 2014
and
M.P(MD)No.2 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
Rep.by its Claims Manager,
Sorrento Buildings,
Door No.6, 1st floor, Latice Bridge Road,
Adaiyar,
Chennai-20. ... Appellant/2nd Respondents

vs.

1)Late G.Karuppanan(Died)
2)K.Solaiyammal
3)Minor K.Vasantha
4)Minor K.Pavithra
5)Minor K.Sulachana
(Minor respondents 3 to 5 are represented by their mother and natural guardian the 1st respondent herein)
6)Tmt.Solaiyammal ...Respondents 1 to 6 /Petitioners

7)S.Sakkanan ... 7th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.04.2013 passed in MCOP.No.92 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Virudhunagar.

For Appellant : Mr.Jerin Mathiew for Mr.M.E.Ilango

For R1 to R5 : Mr.S.Kumar for Mr.V.B.Sundareshwar

JUDGMENT

It is the case of injury due to the accident took place on 20.08.2007 around 09.30 p.m near Pandithoppu, Paraipatti. The injured filed application before the Motor Accident Claims Tribunal, Additional District Judge, Virudhunagar. Pending claim petition, the injured died and his legal representatives were brought on record in MCOP as claimants 2 to 6. The Tribunal considering the facts and circumstances of the case, awarded

Rs.7,38,000/- as total compensation with interest at 7.5% per annum and further ordered pay and recovery. Challenging the same, the appellant insurance company preferred this appeal, mainly on the ground that the deceased was travelling as gratuitous passenger.

2.Learned counsel for the appellant solicited the findings of the Tribunal, stating that there was no dispute that the respondents/claimants were travelling in the Van as unauthorised passengers, which was not disputed by the claimants. Therefore, those unauthorised passengers are not covered under the insurance policy and they are to be treated as gratuitous passengers. Hence, the appellant insurance company ought to have been exonerated from the liability.

3.The Tribunal though found that the respondents/claimants were gratuitous passengers, fixed the liability on the appellant and ordered for pay and recovery. The question of pay and recovery does not arise in the facts of the case, in view of the fact that Section 147 of the Motor Vehicles Act is very clear that unauthorised passengers, who are not covered under the insurance policy, are not entitled for compensation from the insurance company.

4.Such being the legal position which is well settled by the Apex Court as well as this Court, the present appeal filed by the insurance company deservers consideration and accordingly, the finding of the Tribunal fixing liability on the appellant insurance company to pay compensation is set aside.

5.The counsel for the appellant represents that the entire award amount with interest was deposited and the respondents/claimants have withdrawn 50% of the award amount. Taking note of the same, this Court is inclined to permit the appellant to recover the same from the respondents/claimants in the manner known to law and further, the balance amount lying in the credit of the claim petition, is permitted to be withdrawn by the appellant, by filing necessary application before the Tribunal. The respondents/claimants are permitted to recover the entire award amount from the owner of the vehicle in the manner known to law.

In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, M.P(MD)No.2 of 2014 is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Virudhunagar.

Copy to:
The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai

+1 cc to MR.V.B.SUNDARESHWAR, Advocate SR.No.74853
+1 cc to MR.M.E.ILANGO, Advocate SR.No.74316

CMA(MD)No.1046 of 2014
30.11.2016

SMA/PM-PN/22.02.2017:3P/5C