IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.485 of 2000

V.Manonmani ... Appellant

Vs.

1.S.C.Murugesan

2.United India Insurance Co. Ltd.,
38, Anna Salai,
Chennai - 600 002. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the award passed in MCOP.No.253 of 1994 dated 10.3.1999 on the file of the Subordinate Court, Tiruvallur.

For Appellant :Mr.G.Jeremiah

For Respondents :Mr.N.Vijayaraghavan [R2]
R1 - No appearance

JUDGMENT

This appeal is preferred by the claimant who challenges the award where under the Insurance Company of the offending vehicle was exonerated from meeting the liability arising out of compensation payable under the award.

2. The victim is a gratuitous passenger in a Maruti van belonging to the first respondent and insured with the second respondent. Its driver had driven the vehicle very rashly and negligently and dashed against a stationary lorry owing to which the victim suffered fatal injury. The claimant is the mother of the deceased, who died in the said accident and had preferred a claim against the owner and insurance company of the vehicle with a claim of Rs.1,50,000/- against which the Tribunal has awarded a sum of Rs.1,10,000/- payable with interest @ 12% per annum.

3. One the contentions taken by the insurance company in its counter was that there was no cover for a gratuitous passenger

and as such the insurance company was not liable, and during the course of enquiry it produced the policy that was marked as Ext.R-1 by the Tribunal. The Tribunal has found that the policy is not a comprehensive policy but only an Act policy and consequently upheld the contention of the insurance company as the insured has not paid any additional premium, and exonerated it of liability to pay compensation. This is in challenge in this appeal.

4. The law is well settled vide authorities in New India Assurance Vs Asha Rani & Others [(2003) 1 SCC 237], Oriental Insurance Company Vs Brij Mohan & Others [(2007) ACJ 1909] that in the absence of any additional cover by the insurance company by payment of additional premium for the passengers travelling in the vehicle, the insurance company may not be liable. They apply in all fours to this case. However, there is one more point to be considered: Whether the doctrine of pay and recover can be invoked?

5. The effect of Asha Rani, Balji Kaur and Brij Mohan cases came to be considered by the Full Court of this Court in Branch Manager, United India Insurance Co., Ltd., Vs Nagammal in [2009(1) CTC 1] where the Court had put to rest the difference in views and has held that the doctrine of pay and recover cannot be applied to cases decided after the decision in Baljit Kaur case but is available for cases decided prior to that. Balji Kaur case was decided on 06-01-2004. In the instant case the Tribunal has passed the award on 10-3-1999. This necessarily implies that doctrine of pay and recover can be invoked.

6. In the result there is no merit in this appeal and the same is dismissed. However, the second respondent/insurance company is directed to pay the appellant the compensation payable as per the award of the Tribunal dated 10.03.1999 with interest in MCOP.No. 253 of 1994 on the file of Sub Court, Tiruvallur, and realise the same from first respondent, the owner of the offending vehicle. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Tiruvallur.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.7542

CMA.No.485 of 2000

KK(CO)
GN(28/08/2017)