IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.11.2016

Judgment Pronounced on :15.09.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1856 of 2009
and MP No.1 of 2009

National Insurance Company Ltd.,
Sri Ram Site Office,
2A, Prakasam Road, T.Nagar,
Chennai - 600 017. ... Appellant/2nd Respondent

Vs.

1.Selvi
2.Perumal
3.Mariammal
4.R.Rajan ... Respondents/Petitioners 1-3/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.09.2008 made in O.P.No.1405 of 2005 on the file of the Motor Accidents Claims Tribunal (First Additional District Court), Salem.

For Appellant :Mr.D.Bhaskaran

For Respondents :Mr.A.Murugan [R1 to R3]

JUDGMENT

The appellant before this Court is the Insurance Company. It challenges the award of Rs.5,01,300/- passed in M.C.O.P. No.1405 of 2005 on the file of the Motor Accidents Claims Tribunal, (I Additional District Court), Salem, on the solitary ground that there is no contract for indemnifying the owner of the vehicle involved in a road accident.

2.It is an admitted fact that on 14.10.2004, a lorry belonging to the first respondent before the Tribunal (fourth respondent herein) met with an accident, in which one Kannan, who was a cleaner and spare driver of the lorry, passed away. As against the claim of Rs.10,00,000/- made by the legal heirs of the deceased, the Tribunal has awarded a compensation of

Rs.5,01,300/- payble with interest at 7.5% per annum.

3.The learned counsel for the appellant submitted that law is settled Vide authority in Manager, National Insurance Co. Ltd. vs. Saju P.Paul and another [2013(1) TN MAC 25 (SC)] that a cleaner of a goods vehicle, cannot be treated as a third party and if at all his life must be insured, the owner of the vehicle should have to pay additional premium and that this was not done in the present case as could be seen from Ex.R1/policy. He submitted that the Tribunal has misconstrued the same and fastened liability under Section 147 of the Motor Vehicles Act by equating a cleaner to a third party or as an owner or driver of the vehicle. Inasmuch as there is no contract, the Insurance Company must be absolved of liability fastened against it by the Tribunal.

4. Per contra, the learned counsel for the respondents 1 to 3/claimants contended that in terms of Sec.147 of the M.V.Act, there is a statutory obligation to cover the liability arising out of death or bodily injury to a employee arising out of any accident occurred in the course of his employment within the meaning and ambit of Workmen's Compensation Act. Therefore, notwithstanding the pleading that premium has to be separately paid for cleaner, inasmuch as it is contrary to mandatory provision embodied in Sec. 147 of the M.V. Act, the same is liable to be negated.

5. The point is whether a cleaner of the lorry who dies in the course of his employment in a road accident involving the lorry in which he travelled as a cleaner should be specially insured on payment of additional premium. Sec.147 of the M.V. Act reads :

"147. Requirements of policies and limits of liability—
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
(a) is issued by a person who is an authorized insurer; and
(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

The proviso to the Section reads that it saves a liability arising under Workmen's Compensation Act to an employee under Workmen's Compensation Act in respect of the death or bodily injury to, any such employee who is inter alia being carried in a goods vehicle. This would imply that an employee travelling in a goods carrier is covered under statutory scheme of Sec. 147 of M.V. and is not required to be specially insured on payment of additional premium. There however can be one limitation on this and that relates to the seating capacity of the vehicle in question. There is however, no pleading to this effect.

6. Given the nature of the pleading raised and the point argued, I find the submission made on behalf of the appellant is devoid of merit and same is liable to be dismissed.

7. In the result, the appeal is dismissed and the appellant/insurance company is directed to deposit the award amount of compensation along with accrued interest, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon, the claimants are entitled to withdraw their portion of share as in the ratio that was fixed by the Tribunal forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

vga/ds

To:

1. I Additional District Judge,
   Motor Accidents Claims Tribunal
   Salem.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.67902
+1cc to Mr.A.Murugan, Advocate SR.No.68258

CMA.No.1856 of 2009

SKV(CO)
GN(12/01/2018)