IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.01.2017

Judgment Pronounced on : 03.03.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1296 of 2013
and MP.No.1 of 2016
and CMP.No.15241 of 2016

A.C.Nallathambi ...Appellant/1st Respondent

Vs.

1.Chinnammal
2.Ramesh
3.Chitra
4.Satheesh
5.Kuppusamy
6.Pachiammal
(Respondent 2 to 4 declared as major and the 1st petitioner discharged of the guardianship vide order of Court dated 09.08.2016 in CMP.Nos.4347 & 4348 of 2016 in CMA.No.1296 of 2013) ..Respondents 1 to 6 / Claimant

7.United India Insurance Co. Ltd.,
8/10, Square Market,
Mettur Dam. ..7th Respondent/2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.03.2003 in MCOP.No.452 of 1999 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Mettur.

For Appellant : Mr.D.Shivakumaran
For Respondents : Mr.C.Prabakaran
for Mr.M.Sivakumar [R1 to R6]
Mr.T.Ravichandran [R7]

JUDGMENT

The owner of a tanker lorry has come forward with this appeal challenging the liability fastened on him by the award in MCOP.No.452 of 1999 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Mettur.

2. The brief facts are that a tanker lorry bearing registration No.TN-S-2529 was carrying some hazardous substance from M/s.Chemplast, Mettur to Cannonore and after emptying it of its contents on its return trip, it knocked a TVS-50 bearing registration No.TN27-Y-0234, of which the victim of the accident

was a rider. It was a fatal accident. Seeking compensation for the loss of the breadwinner, his widow, three children and parents have moved the Tribunal seeking a claim of Rs.3,00,000/-, whereas the Tribunal has passed an award for Rs.2,20,000/- payable with interest @ 9% per annum.

3. Before the Tribunal, the seventh respondent herein (second respondent before the Tribunal) had taken up a plea that the driver of the lorry in question did not possess a licence to drive a lorry carrying hazardous substance and this constituted a violation of the policy condition and as such it was not liable. Accepting the said plea partially, the Tribunal applied the doctrine of "pay and recover" and directed the Insurance Company to meet the liability at the first instance with a sanction to realize the same from the owner of the vehicle.

4. It is submitted by the learned counsel for the claimants that the insurance company had deposited the entire amount and that the claimants had withdrawn part of the said amount.

5. Aggrieved by the application of doctrine of pay and recover, the learned counsel for the appellant/owner of the lorry in question argued that the evidence on record does not adequately establish that an endorsement such as one the insurance company pleaded at all was necessary. Alternatively, he contended that irrespective of whether the endorsement such as the one referred to above was required or not, it is an undisputed fact that the lorry at that relevant time did not carry any hazardous substance, it having emptied whatever consignment that it had carried during its onward journey to Cannanore. In other words, the lorry at the relevant time when the accident took place should be treated like any other lorry, and it is no case of the insurance company that it was not the negligence of the driver of the lorry but the hazardous contents of the lorry that was responsible for the death of the victim.

6. Rules 129 to 133 of Central Motor Vehicle Rules, 1989, relate to transportation of dangerous or hazardous goods to human life. Rule 131(1)(d) mandates that the driver of the goods carriage carrying dangerous or hazardous goods should be trained in handling the dangers posed during transport of such goods. Rule 132 deals with the responsibility of the Transporter or owner of goods carriage. In particular Rule 132(5) reads:

> “It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of Rule 9 of these rules.”

Rule 9 provides for educational qualification for drivers of goods carriage carrying dangerous or hazardous goods.

7. The phrase used both in Rule 132(5) and Rule 9 above is goods carriage carrying dangerous or hazardous goods. The word 'carrying' connotes that dangerous or hazardous goods must be in the carriage for the provision to apply. When a goods carriage

intended for carrying dangerous goods is apparently empty, can it any longer be termed as or equated with one actually carrying it? Neither express words of law nor logic borne of life's experience can support such an interpretation. For instance, should a driver be specially educated and trained in terms of the Rules for driving an empty carriage to garage for maintenance? And, what if an accident takes place on the way? Contextually, it is not the type of goods carriage that determines who the driver shall be, but the use to which the vehicle was put to when the accident occurred. Since, the accident that led to the ongoing litigation has happened due to the negligence of the driver of an empty goods carriage, there is no necessity for its driver to possess such qualifications as would be necessary in terms of Rule 9 read with Rule 132(5) of Central Motor Vehicle Rules.

8. In the end this Court holds that there is no violation of any of the policy condition and consequently the insurer of the appellant cannot be absolved of its contractual liability to indemnify the appellant for the claim arising out of its driver's negligence. The appeal is therefore allowed and the seventh respondent/insurance company is liable along with the appellant to meet the liability as determined by the award of the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To:

1.The Subordinate Judge, Motor Accidents Claims Tribunal
Mettur.

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

+1 cc to Mr.C.Prabakaran,advocate,sr.14429

+1 cc to Mr.T.Ravichandran, advocate,sr.13992

+1 cc to mr.D.Shivakumaran,advocate,sr.14186.

kji(co)
krd 3/4