IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3157 to 3160 of 2008
and
M.P. Nos.1,1,1,1 of 2008

The New India Assurance Company Limited
Motor Third Party Cell
Regins mansion, 46
Moore street, Chennai-1. .. Petitioner in all the CRPs.

Vs.

1.Mohan .. 1st Respondent in C.R.P.No.3157 of 2008

1.Murthy .. 1st Respondent in C.R.P.No.3158 of 2008

1.Srinivasan .. 1st Respondent in C.R.P.No.3159 of 2008

1.Srinivasa Reddy .. 1st Respondent in C.R.P.No.3160 of 2008

2.Parimalam .. 2nd Respondent in all the CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against decree and judgment dated 12.06.2006 made in M.C.O.P.Nos.4316, 4317, 4319 and 4320 of

2001 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

For Petitioner	: Mr.S.Manohar
For R1	: Not ready in notice
For R2	: Exparte

COMMON ORDER

The Civil Revision Petitions filed against the decree and judgment dated 12.06.2006 made in M.C.O.P.Nos.4316, 4317, 4319 and 4320 of 2001 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

2. Issues involved in all the four civil revision petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioner/Insurance Company is the second respondent, first respondents are the claimants and second respondent, who is the owner of the lorry, is the first respondent in M.C.O.P.Nos.4316, 4317, 4319 and 4320 of 2001. The first respondents filed the said claim petitions claiming a sum of

Rs.1,00,000/- each as compensation for the injuries sustained by them in the accident occurred on 01.07.2001.

4.According to the first respondents, on 01.07.2001, while first respondents were travelling in a lorry bearing Registration No.TN-55C-3556 on the 100 feet road and nearing to opposite Umayal Kalyanamandapam, Madhavaram, the driver of the said mini lorry drove the same in a rash and negligent manner and suddenly applied the break, as a result, the lorry was capsized. In the said accident, the first respondents sustained grievous injuries. The lorry is insured with the petitioner. Therefore, they claimed compensation against both the petitioner and second respondent.

5.The petitioner filed separate counter affidavit and submitted that the first respondents who had travelled in the said mini lorry are not expected to travel in the mini lorry, which is not a passenger vehicle and hence they are only gratuitous passengers. Hence, the petitioner is not liable to pay any compensation to the first respondents.

6. Before the Tribunal, the first respondents examined themselves as witnesses and 28 documents were marked as Exs.P1

to P28. On the side of the petitioner, one Balakrishnan was examined as R.W.1 and marked 3 documents as Exs.R1 to R3.

7. The Tribunal, after considering the pleadings, oral and documentary evidence came to the conclusion that the accident took place only due to rash and negligent driving of the driver of the mini lorry belonging to the second respondent and awarded a sum of Rs.5,000/- each as compensation to the first respondents/claimants. The Tribunal has also taken note of the fact that vehicle is insured with the petitioner and directed the petitioner to pay the compensation to the first respondents, then recover the same from the second respondent after filing execution petition against the second respondent before the Tribunal.

8. Against the common judgment and decree dated 12.06.2006 made in M.C.O.P.Nos.4316, 4317, 4319 and 4320 of 2001, the petitioner/Insurance Company has filed the present Civil Revision Petitions.

9. The learned counsel for the petitioner submitted that the Tribunal had failed to appreciate that the law regarding the liability

of an insurer, in respect of gratuitous passenger in a goods vehicle the Tribunal had failed to appreciate that the law regarding the liability of an insurer, in respect of gratuitous passenger in a goods vehicle was laid down by the Hon'ble Supreme Court exonerating an insurance company and when there is no statutory sanction, the learned Tribunal went wrong in not applying the law as laid down by the Supreme Court. It was also pointed out that the learned Tribunal failed to appreciate that such discretionary powers of directing to "pay and recover" was available only to Hon'ble Supreme Court under Article 142 of the Constitution of India and all Courts subordinate to the Supreme Court ought to follow only the law as laid down by the Hon'ble Supreme Court and shall not exercise the discretionary power exercised by the Supreme Court. It was also pointed out that the award of Rs.5,000/- granted by the Tribunal was excessive and without any basis. The learned counsel for the petitioner has cited the following judgments in support of his contention:

(i) ***United India Insurance Co. Ltd., v. Chinnakannan & Ors reported in 2004 (2) TN MAC 146***

"LIABILITY OF INSURANCE COMPANY - Act only Policy - Goods Vehicle - Claimants travelled in goods vehicle / Tempo along with goods i.e., 25 kg of rice, 5 kg of Dhal and adoration articles to celebrate family deity festival - Tribunal, on the basis that claimants travelled in goods vehicle along with their goods, held that appellant / Insurance Company is liable to pay compensation following judgment of Apex Court in New India Assurance Co. Ltd., V. Asha Rani & Ors reported in 2003 ACJ 1.

Tribunal awarded compensation against Insurance Company only on ground that claimants travelled along with goods - Pleadings, evidence and intention of parties to hire vehicle, not properly appreciated by Tribunal - It cannot be said that 30 passengers are allowed to travel in goods vehicle and they can sustain compensation claim against Insurance Company on basis that they had taken very small quantity of goods, that too, nobody claimed exclusive ownership on the same - Moreover, u/Rule 236 of T.N.Motor Vehicle Rules even along with goods only six persons are allowed to travel in a goods vehicle - Order of Tribunal as against Insurance Company / Appellant, held not sustainable, set aside."

(ii) **National Insurance Co. Ltd., v. Cholleti Bharatamma**

& Ors. reported in 2008 (2) TN MAC 29

"MOTOR VEHICLES ACT, 1988, S.147 - Goods Vehicle - Twenty persons travelling in Truck - Accident took place on 03.01.1991 - Policy covered risk of only owner of goods and premium paid for one person only - All 20 persons cannot be deemed to have travelled as owners of goods, when premium paid for only one person as owner of goods - Tribunal rightly refused to fasten liability of Insurer.

MOTOR VEHICLES ACT, 1988, S.147 - Gratuitous passengers - Accident took place on 01.05.1997 after 1995 Amendment - Finding of Tribunal that deceased travelled in vehicle not as owners of goods - However awarded compensation to legal-heirs of deceased - Challenging legality of award of Tribunal, Insurer contended before High Court that deceased were gratuitous passengers and policy not covered their lives - Insurer also contended that decision in Satpal Singh being referred to Larger Bench in Asha Rani's case same was not a binding authority - High Court, however, dismissed Appeal filed by Insurer following Satpal Singh - Impugned order of High Court in Appeal set aside."

(iii) **United India Insurance Co. Ltd., v. Nagammal & Others reported in 2009(1) TN MAC 1**

"MOTOR VEHICLES ACT, 1988, Ss.147, 149(4) & 149(5) - Gratuitous Passengers travelling in Goods Vehicle - Liability of Insurer - Extent - Under S.147 Insurer not statutorily required to cover liability in respect of a passenger in goods vehicle unless such passenger is owner of goods or agent of owner of goods accompanying such goods in goods vehicle - In absence of any statutory requirement to cover liability in respect of passenger in goods vehicle, principle of 'pay and recover' as statutorily recognized in Ss.149(4) & 149(5) not applicable ipso facto - Therefore, ordinarily Court not expected to issue direction to insurer to pay to Claimant and thereafter to recover same from owner - Where, relying upon decision in Satpal Singh, Tribunal directed Insurer to pay compensation, Appellate Court required to consider as to whether such direction could be set-aside in its entirety or liability should be fastened only on driver and owner or whether insurer should be directed to comply with direction to pay and recover - No such direction can be issued by Tribunal after decision in Baljit Kaur's case, merely because date of accident was before such decision -

> Date of accident is immaterial - However, where matter already decided by Tribunal before decision in Baljit Kaur, it would be in discretion of Appellate Court depending upon facts and circumstances of case, whether doctrine of 'pay and recover' to be applied or not.”

10. I have heard the learned counsel appearing for the petitioner and perused all the materials available on record.

11. As far as the quantum of compensation is concerned, the Tribunal taking into consideration that the first respondents/claimants have sustained only simple injuries, has awarded a sum of Rs.5,000/- each to the first respondents/claimants as compensation, which is just and reasonable compensation and the same is hereby confirmed. The Motor Vehicles Act is a beneficial legislation in favour of the victims. The victims should not be denied their rightful compensation on technicalities. Taking into consideration only a sum of Rs.5,000/- is awarded to each of the first respondents, I hold that in the interest of justice and equity, this is not a fit case to set aside the award of the Tribunal.

12. In the above circumstances, this Court is not inclined to interfere with the impugned award passed by the Tribunal. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. The petitioner/Insurance Company had deposited the entire award amount together with interest and costs and the first respondents/claimants are permitted to withdraw their respective shares. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.07.2017

Index : Yes/No

Speaking/Non speaking order:Yes/No

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To

The Motor Accident Claims Tribunal
V Judge, Small Causes Court, Chennai.

V.M.VELUMANI,J.

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