

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.12.2016

Judgment Pronounced on : 03.03.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1602 of 2002

National Insurance Company Ltd.,
Rep. by its Manager,
Mettur Dam.

... Appellant

Vs.

1.Alangarappan
2.Chinnathangam
3.A.Rathinam

...

Respondents

[Paper publication order to R3 vide
order dated 16.11.2016]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 21.12.2001 made in MACT.OP.No.555 of 2001 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Krishnagiri.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.P.Mani [R1 & R2]
R3 - No appearance

JUDGMENT

The Insurance Company which is arrayed as the second respondent in MCOP.No.555 of 2001 on the file of the Motor Accident Claims Tribunal (III Additional District Court) Krishnagiri, has come forward with this appeal challenging the liability fastened on it by the Tribunal.

2. It is a case in which a tempo van bearing registration No.TN29 A 9995, a goods vehicle, collided with the State Transport Corporation bus, and it is stated that there were 25 persons in the goods vehicle and one Kumar who was also in the tempo van died owing to the said accident. The deceased was aged twenty one years. Seeking compensation on various heads, his parents moved the Tribunal with a claim of Rs.5,00,000/- as against which the Tribunal has passed an award for Rs.3,00,000/- fastening the liability on the insurance company.

3. The Tribunal accepted the plea of the claimants that the deceased was a cleaner in the goods carrier and that he was travelling in the carrier vehicle as an employee of the owner of the vehicle when the accident took place. In arriving at its conclusion, it also observed that the insurance company, which alone contested the matter, did not examine the owner of the vehicle to establish that the deceased was not an employee under him.

4. The learned counsel for the appellant submitted that admittedly it is a case where 25 persons were travelling in a goods carrier of who deceased Kumar was one, which makes it evident that they were travelling essentially as unauthorised passengers, and by no stretch of imagination Kumar could be termed as one who either travelled in the vehicle as an employee of the owner of the vehicle or owner of the goods or such owner's representative.

In fact, the claimants themselves tried to bring the deceased under the category of employee of the owner of the vehicle but except their self-serving statement there is no credible evidence available on record to hold so. In this regard, the approach of the Tribunal was not appropriate since it presumes the existence of a burden on the insurance company to prove the negative when the burden in law lies on one who pleads the affirmative. It is a settled law that gratuitous passengers in a goods vehicle are kept away from statutory insurance cover and hence they cannot maintain a claim against the insurance company.

5. Resisting the above submissions, the learned counsel for the claimants/respondents 1 & 2 submitted that working as a cleaner in a goods carrier fall within the employment in an unorganised sector and it is impossible to obtain documentary evidence to prove the same. Further, even if the contrary were to be presumed, Ext.R-1 insurance policy indicates that additional premium has been collected under the head NFPP (Non-fare Paying Passenger). Therefore, even if the contention of the appellant were to be presumed valid, unless it is established that the deceased had paid fare, it cannot be presumed that he had actually paid any fare to travel. And this fact is only within the knowledge of driver who drove the goods carrier and the insurance company did not produce any evidence to establish the same.

6. Replying the contentions of the counsel for the claimants, the learned

counsel for the appellant would now argue that merely because additional premium has been collected for additional cover for death or injury to Non-fare Paying Passengers (NFPP), it cannot be automatically held that everyone who travels in a goods vehicle should be presumed to fall within the category of NFPP and again this is a fact that the claimants ought to prove and it is not a matter for the Court to presume. In fact, it is necessary to understand a construction such as this in the context of the indisputable fact that some 25 persons have traveled in the goods vehicle. At any rate, contended the counsel, that the nature of the accident is such that the Tribunal should have apportioned negligence equally both on the driver of the bus as well as that of the van of which the appellant was the insurer.

7. The appellant has come out with two plans in the alternative. Its Plan-A is that it is not liable since the victim was a gratuitous passenger. When it was brought to its notice about the additional premium received to cover death or injury to Non-fare paying passenger, it came out with its slightly diluted Plan-B version of its strategy. It would now contend rather presumptively that because some 25 passengers had travelled in the van, it could have been only based on payment of fare. It has examined R.W.1, one of its officials during enquiry. He speaks essentially to his belief but not about the fact required to be established, since the fact to be proved here is whether the victim had paid fare or not, and not the mental state of R.W.1 as to if he believed that the victim had traveled on payment of fare. Here the appellant failed.

8. Then it advanced a case for apportioning negligence. This appears to be more as an argument in desperation rather than on conviction. There is hardly any evidentiary support for this submission.

9. In the final analysis, I find no merit in the appeal and the same is dismissed without costs. The appellant/insurance company is directed to deposit the award amount less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order, whereupon the claimants are entitled to withdraw the same forthwith.

03.03.2017

To

1.The Motor Accident Claims Tribunal,
III Additional District Court,
Krishnagiri.

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

N.SESHASAYEE, J.

ds

CMA.No.1602 of 2002

03.03.2017

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