IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3539 of 2004
and CMP.No.19170 of 2004

United India Insurance Co. Ltd.,
Ambur. ... Appellant/Respondent 2

Vs.

1.M.Santhosh@ Santhoshan ... Respondent1/Petitioner

2.K.Gnanam ... Respondent2 /Respondent1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 07.11.2003 made in MCOP.No.572 of 2002 on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : No Appearance

JUDGMENT

On 06.05.2002 at about 11.15 hours, petitioner along with her villagers totalling more than fifteen persons were travelling from Anumanthatheertham towards Uthangarai in a goods carrier namely a tempo bearing registration No.TN55-8759. The said vehicle belonged to the first respondent and was insured with the appellant (the second respondent before the Tribunal). On the way, the driver of the vehicle lost control and dashed against a motorcycle and thereafter, the tempo itself capsized, due to which the passengers travelling in the vehicle suffered grievous injuries. Concerning this accident, Uthankarai police has registered a case in Crime No.376 of 2002.

2.Seeking compensation on various heads for the injuries that he had suffered, the claimant approached the Tribunal with a claim of Rs.50,000/-. The Tribunal however granted Rs.8,500/- as compensation payable with interest at 9% per annum. Before the Tribunal, the appellant/Insurance Company took up a plea that the petitioner and others who travelled in the vehicle in question have no policy cover for death or injury since the vehicle was a goods carrier. In dealing with this aspect, the Tribunal has observed that even though the vehicle was a goods carrier as per policy condition, there is only a prohibition to carry beyond 15 persons. Further, the petitioner has pleaded and deposed that they were carrying rice and other materials for offering worship to the deity. This has also been reckoned by the Tribunal to consider that the petitioner perhaps would fall within the category of those who accompanied the goods in a goods carrier, for whom there is a statutory cover. Notice has been served on the respondents even through paper publication, but they did not appear today.

3. The learned counsel for the appellant submitted that the Tribunal had erred in holding that fifteen as the number of persons who travelled in a goods carrier at that relevant time by relying on the FIR, whereas PW.1 has deposed that nearly twenty persons were travelling in the goods carrier at that relevant time. Even FIR states more than fifteen persons had travelled in the vehicle. Irrespective of the number of passengers who then travelled, the pointed defence of the Insurance Company was that there was no cover for passengers travelling in the offending vehicle. Besides they cannot also be presumed to accompany the goods for what they carried do not fall within the definition of "goods" under Section 2 of the Motor Vehicles Act.

4. It is an admitted fact that the offending vehicle was a goods carrier and all those who were injured, more particularly the petitioner herein were travelling in it as a passenger. The policy has been produced by the petitioner himself. But it does not disclose that there is any additional cover for those who travelled in the goods carrier. The next point is could the petitioner be termed as one who had travelled along with the goods to fall within the statutory cover required to be taken under Section 147 of the Motor Vehicles Act? Here, as rightly contended by appellant, what the passengers of the offending vehicle carried do not fall within the definition of goods. Section 2(13) of the Motor Vehicles Act reads as hereunder :

> "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of passengers travelling in the vehicle;"

5.The learned counsel for the appellant has submitted that one set of cases [CMA.Nos.1758 fo 1770 of 2003] arising from the same accident met with a similar fate and was reported in

United India Insurance Company Ltd., Vellore Vs. Chinnakannan & Another [2004 TNMAC 146 (DB)].

6. In the result, there is merit in the appeal and the same is allowed. No costs. The claimant is however entitled to realise the compensation of the award from the owner of the vehicle. If any amount is deposited by the appellant/Insurance Company, the appellant is permitted to withdraw the same forthwith. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Sub Court, Krishnagiri.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.5745

CMA.No.3539 of 2004

EV(CO)
GN(10/04/2017)