

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2884 of 2017
and C.M.P.No.16892 of 2017

ICICI Lombard General Insurance Company
Ltd., Chennai

... Appellant/3rd Respondent in
Tribunal below

..vs..

1. Chinnapillai
2. Kandasamy
3. Mariammal
4. Raman
5. The New India Assurance Company Ltd.,
Salem

... Respondents/claimants 1 to 3 and
RR 1,2 in Tribunal below

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.07.2012, made in M.C.O.P.No.134 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mrs. R.Sreevidhya

For Respondents: Mr. K.Suryanarayanan, for R-1 to R-3
Mr. D.Nadhamuni, for R-5
No Appearance, for R-4

J U D G M E N T

This Appeal has been filed by the Insurance Company, challenging the liability to pay compensation of Rs.5,06,000/-.

2. Brief facts, which are essential to appreciate the contentions raised by the Insurance Company, are as follows:-

Chinnapillai, first claimant, aged 26, Kandhasamy, second claimant, aged 50, Mariammal, third claimant, aged 45, all the

three together, have filed a claim petition for compensation in respect of the death of K.Palanimuthu, in an accident on 27.05.2007.

2.1. The deceased K.Palanimuthu, aged 30 years, coolie cum loadman, earning a sum of Rs.3,300/- per month, died in an accident on 27.05.2007. The accident is said to have taken place when the deceased was travelling, as Loadman, in the vehicle (Tractor) bearing Registration No.TN30W9428, belonging to the fourth respondent herein, namely, A.Raman, (the first respondent before the Tribunal). It is alleged that the tractor was driven in a rash and negligent manner and thus, the deceased fell down from the moving vehicle. The wheels of the vehicle ran over him and thus, caused instant death of the deceased. So alleging, the claim petition, claiming a sum of Rs.8,00,000/-, has been filed as against the owner of the tractor-fourth respondent and Insurance Company-appellant herein.

3. It was also alleged that New India Insurance Company has wrongly impleaded as the second respondent and at a later point of time, appropriate Insurance Company, namely, the appellant herein has been impleaded.

4. The Insurance Company, as the third respondent before the Tribunal, filed the counter opposing the claim made by the Legal Representatives on the following grounds:-

(i) The deceased travelled in the tractor as the unauthorized passenger and therefore, the Insurance Company is not liable to compensation.

(ii) The policy does not cover either coolie or any of the passengers and therefore, the Insurance Company is not liable to pay any compensation.

5. The Tribunal, on a consideration of the materials placed before it, came to the conclusion that the deceased had travelled in the tractor in the capacity as Loadman and not in the capacity as unauthorized passenger and therefore, the deceased, being a person, authorised to travel in the vehicle and hence, the Legal Representatives of the deceased are entitled to compensation from the Insurance Company.

6. So far as the liability is concerned, the Tribunal relied upon the investigation report, which is filed as Ex.R-3 and relying upon the evidence of the Legal Officer, Barathkumar, who was examined as R.W.1 and who admitted during cross-examination that as per the terms and conditions of the policy, authorized passengers, owner of the goods and the employees of the owner are the category of persons, covered under the policy.

6.1. These findings are under challenge in this Appeal.

7. The learned counsel appearing for the appellant / Insurance Company would submit that the deceased had travelled in the mud guard portion of the tractor and as there was no seating capacity for the tractor, it was clearly a travel, which is unauthorized and therefore, the Insurance Company is not liable to pay compensation.

8. The next contention raised is that, in the event of this Court concluding that the Insurance Company would be liable to pay compensation, even then, as per the reported decision in 2015 ACJ 1677 (New India Assurance Co. Ltd. v. Govindan and another) as there is breach of terms and conditions of the policy, the Insurance Company must be given liberty to recover the amount of compensation from the owner who committed the breach. In this decision, it has been held as under:-

"14. As per the dictum laid down in National Insurance Co. Ltd., v. Swaran Singh, 2004 ACJ 1 (SC); United India Insurance Co. Ltd., v. S.Saravanan, 2010 ACJ 2046 (Madras); Bajaj Allianz General Ins. Co. Ltd., v. Manimozhi, 2010 (2) TN MAC 542; Branch Manager, United India Insurance Co. Ltd. v. Nagammal, 2009 ACJ 865 (Madras); Jawahar Singh v. Bala Jain, 2011 ACJ 1677 (SC) and Iffco-Tokio General Ins. Co. Ltd., v. A.Jafer Sadiq, 2012 (1) TNMAC 394, it is settled that if the insurer establishes that there is a breach of policy condition under Section 149 (2) (a) (ii), the Insurance Company, though not liable, as it has successfully established its defence, can be directed to pay and recover from the insured."

9. The learned counsel appearing for the respondents 1 to 3 / claimants, by relying upon the the terms and conditions of the Insurance policy, would submit that, as the person has travelled in the vehicle as the Loadman, there is coverage under the policy and therefore, the Insurance Company must be directed to pay the entire amount of compensation and in support of the said contention, the learned counsel relied upon the decision reported in 2015 ACJ 140 (New India Assurance Co. Ltd., v. Raman and others) where under, it has been held that when the deceased was working as Agricultural coolie and the policy covered the risk of driver, coolies and other employees connected with the operation of loading / unloading of the vehicle, the Insurance Company is liable to pay compensation. The relevant observations, viz., paragraphs 8 and 9, read thus:-

"8. In Exh.R-1, copy of the policy certificate, it is found as follows:-

"LIABILITY TO PUBLIC

ADD: Legal liability to driver / coolies /

other employees in connection with the operation and / or maintaining and / or unloading of motor vehicle, Endtt. 17 (1) Person (s).

ADD: For increased third party property, damage risks, Section II-I (ii) Endtt. 709 Unlimited Amount."

9. The above said entries incorporated in the policy would make abundantly clear that there was contract between the owner of the vehicle and the insurance company and hence the insurance company has to be anchored with the liability to pay the compensation. In such view of this matter, the award passed by the Claims Tribunal deserves to be confirmed and it is accordingly confirmed."

10. On behalf of the respondents 1 to 3 / claimants, yet another decision relied upon is that the one reported in 2008 ACJ 1388 (SC) (New India Assurance Co. Ltd., v. Darshana Devi and others). It is the case of death of a person sitting on the mud guard of the tractor, where he fell down due to the rash and negligent driving and became the victim of that accident. In this case, the Hon'ble Supreme Court, held that the liability of the Insurance Company is statutory, its defence is admitted and after discussing all the case laws on the subject, has come to the conclusion that the Insurance Company is liable, granting right to recovery of the compensation from the owner. The relevant observation reads thus:-

"It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14.11.1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover 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. Then, as per the proviso, the policy shall not be required 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 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy. As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability."...."

11. As it is an admitted case that the policy covers the loadman / coolie, then the Insurance Company is liable and the liability is beyond doubt, as per the reported decisions, referred to supra.

12. As rightly contended by the learned counsel appearing for the appellant / Insurance Company, as there is violation of terms and conditions of the policy, i.e., the deceased ought not to have been permitted to travel in the mud guard portion of the tractor, the appellant is entitled to get reimbursement of the compensation paid from the owner of the vehicle. In other words, the Insurance company would be entitled to recover the amount of compensation from the owner of the vehicle, as held in the decision of the Supreme Court in 2008 ACJ 1388 (SC) (referred to supra).

13. In the result, the Civil Miscellaneous Appeal, filed by the Insurance Company, is partly-allowed, directing it to pay the compensation to the claimants / respondents 1 to 3 herein, with liberty to recover it from the owner.

14. It is represented that during the pendency of the claim petition, claimants 2 and 3, who are the parents of the deceased passed away and the only claimant is the first claimant, who is the wife of the deceased. As it is represented that there is no other legal heir, except the first claimant, the amount which was ordered to be payable to the second and third claimants shall remain payable to the first claimant. The Legal Heir

certificate may be produced before the Tribunal by the learned counsel appearing for the first claimant.

15. The appellant / Insurance Company is directed to deposit the amount of compensation, as determined by the Claims Tribunal, along with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amount to the Savings Bank Account of the first claimant, through RTGS. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal, III Additional District
Court,
Kallakurichi.

Copy To

The Section Officer,
V.R.Section, Madras High Court,
Chennai 104

C.M.A.No.2884 of 2017
& CMP No.16892 of 2017

CNR(CO)
GN(03/04/2018)