IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.840 of 2017

National Insurance Co. Ltd.,
Tiruchy. ... Appellant / 3rd respondent

versus

1. Vijaya
2. Rangarasu
3. Murugesan
4. Indirani
5. Lakshmi
6. Savithiri ... Respondents 1 to 6 / Petitioners 1 to 6

7. Gunasekaran
(R7 is given up)
8. Sivakumar ... Respondents 7 and 8 / Respondents 1 & 2

(R8 remains ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.02.1998, made in M.C.O.P.No.663 of 1993, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Tirupur.

For Appellant : Mr.Vijayaraghavan

JUDGMENT

The deceased, Annavi, aged about 55 years, doing vegetable business and earning a sum of Rs.2,500/- per month, died in the accident, that took place on 30.04.1993 at 3.30 p.m. Hence, the legal representatives of the deceased filed a claim petition in M.C.O.P.No.663 of 1993 before the Motor Accident Claims Tribunal (Subordinate Court), Tirupur, claiming compensation of Rs.5,00,000/-.

2. The claim was resisted by the Insurance Company on the ground that a) that the deceased was travelling in the goods vehicle bearing Registration No.TCI 4962 which is prohibited and therefore, as per policy and law, the Insurance Company is not

liable to pay the compensation; b) that the legal heirship, nature of accident and the responsibility of the first respondent were disputed.

3. The Tribunal, after considering the oral and documentary evidence, came to the conclusion that the respondents 1 to 3 before the Tribunal, who are now the 7th and 8th respondents and the appellant herein, are jointly and severally liable to pay the compensation of Rs.1,12,000/- to the claimants with interest at the rate of 12% per annum. Ultimately, on behalf of the respondents 1 and 2, the third respondent/appellant was ordered to pay the compensation. As against the fair and decreetal order dated 16.02.1998, the Insurance Company has filed this appeal.

4. Though it is the contention of the learned counsel appearing for the appellant that the deceased was a passenger in the goods vehicle and the liability to such passenger was neither required to be covered nor was actually covered under Section 147 of the Motor Vehicles Act, 1988, however, it issubmitted by the learned counsel appearing for the appellant that C.M.A.No.2710 of 2002, which was filed by the Insurance Company/appellant in respect of another person, however pertaining to the same accident, in which the deceased therein also travelled in the goods vehicle in the capacity as owner of the goods and died in the very same accident, this Court has dismissed the said appeal.

5. A copy of the order passed in C.M.A.No.2710 of 2002 is placed before this Court, a perusal of which reveals that similar issue, as raised in this appeal, has been raised in the said appeal, and this Court, after considering the issue raised by the appellant in this appeal, relying on the decision of the Hon'ble Apex Court, held as under :

> "So far as the capacity in which the deceased travelled in the vehicle is concerned, the finding of the Tribunal is that the deceased accompanied the vehicle as the owner of the vegetables. The Tribunal has specifically mentioned that it is not even suggested to the witnesses that the deceased was not doing such business. Therefore, it is clear that the deceased was travelling in the vehicle only in the capacity as the owner of the goods accompanying the vehicle. Therefore, the conclusion of the Tribunal that the deceased in the vehicle only in the capacity of owner of the goods does not require any interference. Then the next question is the liability

of the Insurance Company with reference to persons who are travelling in the goods vehicle in the capacity as the owner of the goods/his authorised representatives.

8. The Amending Act of 54 of 1994, which came into force with effect from 14.11.1994 made the insurance compulsory in respect of the owner of the goods or his authorised representatives travelling in the vehicle. By reason of the 1994 Amendment what was added to Section 147 is "including the owner of the goods or his authorised representatives carried in the vehicle" instead of the phrase "any person". In the case of National Insurance Co. Ltd., vs. Baljit Kaur reported in (2004) 2 SCC 1, the Hon'ble Apex Court has held as follows:

> "17. By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise."

In view of the amendment made to the Motor Vehicles Act 1994, the legal position is that the Insurance Company is statutorily required to cover the liability in respect of owner of the goods/representatives of the owner accompanying the goods. Therefore, legally, the Insurance Company is liable to compensate claimants as it has been proved that the deceased travelled in the vehicle only in the capacity of the owner of the goods. It is clear that the Insurance Company is also liable to make good the loss. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

6. In the present case on hand, the deceased who died in the very same accident, also travelled in the goods vehicle in the capacity of owner of the goods and the issue raised herein is similar to the issue raised in C.M.A.No.2710 of 2002. The liability of the appellant cannot be disputed, when the deceased is shown to have travelled in the capacity as owner of the goods.

7. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree dated 16.02.1998, made in M.C.O.P.No.663 of 1993, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Tirupur. No costs.

8. The appellant/Insurance Company is directed to deposit the entire compensation, less the amount, if any, already deposited, along with interest at the rate of 12% p.a. from the date of petition till the date of deposit to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimants are entitled to the compensation as per the ratio of the apportionment made by the claims Tribunal. On such deposit being made, the Tribunal shall transfer the share to which the respective claimant is entitled to, as per the ratio of apportionment, directly to their Bank Account through RTGS, within a period of two weeks thereafter.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ogy/GLN

To

1. The Subordinate Judge
   Motor Accident Claims Tribunal
   Tirupur.

Copy to
The Section officer
VR Section, High Court, Madras 104.

SV(CO)
SP(17/04/2018)