SBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.728 of 2015
and
M.P.(MD)No.1 of 2015

Royal Sundaram Alliance Insurance Company Ltd.,
No.45-46, Sundaram Towers,
Whites Road,
Chennai.
Represented by its Branch Manager ... Appellant / 2nd Respondent

Vs.

1.S.Rajakannu ... 1st Respondent/1st Claimant
2.Santha ... 2nd Respondent/2nd Claimant
3.Rajalatchumi ... 3rd Respondent / 3rd Claimant
4.Mohammed Rasooldeen ... 4th Respondent / 1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 31.10.2014 made in M.C.O.P.No.62 of 2012 on the file of the Motor Vehicles Accident Claims Tribunal [Principal Sub Judge], Kumbakonam.

For Appellant : Mr.M.Jerin Mathew for
Mr.M.E.Ilango
For R-1 to R-3: Mr.S.Rajaprabu
For R-4 : Mr.B.Jameel Arasu

J U D G M E N T

Heard the learned counsel on either side.

2. The insurer has filed this appeal questioning the impugned award principally on the ground of liability.

3. The one Raja was working as a Chef in the hotel owned by one Mohammed Rasooldeen. He was travelling in the goods vehicle owned by the said Mohammed Rasooldeen. The vehicle was driven in a rash and negligent manner. It capsized. In the resulting accident, the said Raja died. The parents and the sisters of the deceased filed M.C.O.P.No.62 of 2012 on the file of the Motor Vehicles Accident Claims Tribunal (Principal Sub Judge), Kumbakonam. The Tribunal awarded a sum of Rs.6,35,000/- as compensation. It also directed that since there has been a breach of policy condition, the insurer can satisfy the award and recover the same from the owner.

4. Contending that the insurer ought not have been fastened with any liability, this appeal has been filed.

5. The learned counsel appearing for the appellant insurance company would contend that the vehicle involved in this case was a goods vehicle. The victim in this case did not travel in the capacity of a driver, cleaner or load man. He had completed his Catering Technology course and was working as a Chef. Therefore, he would not be covered by the terms of the policy.

6. I went through the policy which was marked as Ex.R.3. It has been mentioned in the policy that the legal liability of the insurer would cover paid driver/cleaner (not exceeding seven persons). IMT 28 endorsement is found on the policy. The necessary premium was also been paid.

7. IMT 28 reads as under:-

> "IMT.28.LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE.
>
> In consideration of an additional premium as stated in the Schedule notwithstanding anything to the contrary contained in the Policy it is hereby understood and agreed that the Company shall indemnify and Insured against the Insured's legal liability under the Workmen's Compensation Act, 1923, the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the Insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.
>
> Provided always that
>
> (1) this Endorsement does not indemnify the Insured in respect of any liability in cases where the Insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for Insured's general employees;
>
> (2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;
>
> (3) the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) In the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this endorsement will be allowed.

Subject otherwise to the terms conditions limitations and exceptions of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988."

8. A careful reading of the aforesaid endorsement would show that the category of persons intended to be covered by the policy would obviously include not only the driver and cleaner but also the load man. In this case, considering the facts and circumstances, one can safely conclude that the deceased would also be lending his hand in loading and unloading work. Therefore, I would hold that the deceased was clearly covered by the category of persons mentioned in the policy in question.

9. Looking from that angle, the Tribunal ought to have fastened the entire liability on the appellant insurer alone. It erred in invoking the pay and recovery principle. It is true that in this case, the vehicle owner has not chosen to file any appeal. But here, we are concerned with awarding just compensation. The vehicle in question enjoyed policy coverage. The deceased came under the category of persons covered. The deceased was, admittedly, an employee of the vehicle owner. In fact, when he was returning from the hotel to the lodging house, the accident had occurred.

10. So, taking into account all these circumstances, I am of the view that the award dated 31.10.2014 in M.C.O.P.No.62 of 2012 on the file of the Motor Vehicles Accident Claims Tribunal Principal Sub Judge, Kumbakonam deserves to be modified. While disposing of this appeal filed by the appellant insurer, this Court holds that the vehicle owner ought not to be fastened with any liability. The appellant insurance company shall be fastened with the entire liability to satisfy the award in question. The appellant insurance company is directed to pay the entire award amount with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the amount, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

11. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Motor Vehicles Accident Claims Tribunal
(Principal Sub Court),
Kumbakonam.

Copy to:
The Records Keeper (Vernacular Section),
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.M.E.Ilango, Advocate, SR.No. 89279
+1CC to Mr.B.Jameel Arasu, Advocate, SR.No. 89470

C.M.A.(MD)No.728 of 2015
24.11.2017

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