IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No. 1756 of 2006
and
C.M.P.No.8273 of 2006

New India Assurance Co.Ltd.,
Arni. ... Appellant/2nd Respondent in Tribunal below

Versus,

1. K. Lakshmikanthan
2.S.Imthiyass ... Respondents/Petitioner and 1st Respondent in Tribunal below

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No. 285 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar, Tiruvannamalai District, dated 29.10.2004.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.V.R.Appaswamee, for R1
Mr.G.Parthiban, for R2

JUDGMENT

These Civil Miscellaneous Appeals are directed against the Judgment and Decree made in MCOP. No.285 of 2001 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated 29.10.2004.

2. The brief facts of the case are as follows:-

On 27.04.2001 at about 12.30 p.m., the claimant was returning in a TATA van bearing Registration No.TN-31-A-3533 along with other passengers after attending a marriage function. While the van was proceeding in the Kanchipuram-Vandavasi Road, between Dusi and Maamandoor, the driver of the said van, driven the same in a rash and negligent manner, hit against the tree on the left side of the road, all the persons including the driver of the van were sustained injuries. A Criminal case was registered against the driver of the van in the Dusi Police Station for his rash and negligence driving. The injured persons have filed separate claim petitions before the tribunal, claiming compensation for the injuries sustained by them in the said accident.

3. The appellant/Insurance Company, in the counter statement, has stated that the vehicle in which the claimant had traveled was permitted to carry only goods. But, on the date of occurrence, along with the claimant, several number of persons were travelled as passengers in the said goods carriage vehicle, which is against the violation of policy and permit conditions. Hence, it is stated that the Insurance Company is not liable to pay any compensation.

4. The Tribunal, after analyzing the evidence and documents placed before it, has observed that the though it is a settled law that the passengers cannot travel in a good vehicle, which insured under the terms and conditions of good policy, to meet the ends of justice, the tribunal was directed to pay the compensation to the claimants and recover the same from the owner of the vehicle, since the driver of the said van is solely responsible for the accident. Aggrieved against the same, the appellant/Insurance Company has preferred these appeals.

5. In the grounds of appeal, it has been stated that as per the policy, only six persons are permitted to travel in the goods carriage vehicle, but on the date of accident, more than fifty persons were travelled in the said goods vehicle. Therefore, it was a clear violation of the policy condition. The further averment is that the liability fixed by the tribunal on the appellant/Insurance company is not proper.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On a perusal of the records, it is clear that totally are fifty numbers were travelled as passengers in the said van, which solely meant for the purpose of carrying goods and the policy was also taken for the said purpose only.

8. It is seen from the records that on the side of the appellant, RW.2 was examined and he had deposed before the Tribunal that the vehicle which was involved in the said accident is a goods carriage vehicle and on 27.04.2001 nearly 100 persons were allowed to travel in the said vehicle who were returning after attending a marriage function and the vehicle was used against the policy and permit conditions. From the evidence of the appellant, it is clearly proved that the claimants travelled in the said goods vehicle as passengers as

per Ex.R8- permit of the vehicle. Hence, it is the argument of the appellant/Insurance Company that they are not liable to pay the compensation as awarded by the tribunal.

9. The learned counsel appearing for the appellant has referred a case law reported in 2008 (1) MAC 348 (SC) in the case of National Insurance Co. Ltd vs Prema Devi & Ors Dated: 29.02.2008. The relevant portion of the judgment is extracted hereunder;

> "8. In Satpal Singh's case (supra) this Court proceeded on the footing that provisions of Section 95 (1) of the old Act are in pari materia with Section 147(1) of the Act as it stood prior to the amendment in 1994.
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> 13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'WC Act"). There is no reference to any passenger in "goods carriage".
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> 14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

> 15. Our view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

10. In view of the above decision of the Hon'ble Apex Court and also considering the fact that the claimant has traveled in the said goods carriage, as a gratuitous passenger and also the fact that undisputedly they have not traveled in the goods carriage in the capacity of owners of goods or representatives of owner of goods being transported in the goods carriage, this Court with no hesitation, has come to the conclusion that the appellant/Insurance Company is not liable to pay the compensation awarded to the claimants by the tribunal and the sum awarded by the tribunal has to be paid by the owner of the vehicle, since the driver of the said goods vehicle is solely responsible for the accident. The award passed by the tribunal is modified accordingly.

11. In the result, these Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12. The second respondent/owner of the vehicle is directed to deposit the award amount awarded by the Tribunal with interest and costs, before the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank accounts through RTGS within one week thereon. The Appellant/Insurance Company is permitted to withdraw the amount deposited, if any.

Sd/-
Assistant Registrar (C.O.)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal/Subordinate Judge,
Cheyyar, Tiruvannamalai District.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

AKM/18.11.19/5P-3C /

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