IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.2625, 2626 of 2008

Gothandapani ... Appellant/Petitioner in CMA.2625 of 2008

R.Jayakumar ... Appellant/Petitioner in CMA.2626 of 2008

..Vs..

1.B.Ponnuthaiammal

2.The Oriental Insurance Company Limited,
Divisional Office, Chamundi Complex,
Four Roads,
Salem - 7. ... Respondents/Respondents in both CMAs

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed in M.C.O.P.No.1351 of 2001 and M.C.O.P.No.219 of 2002 on the file of the Motor Accident Claims Tribunal, Salem (Additional District Judge and Special Judge for E.C. Act Cases, Salem) dated 21.06.2004.

For Appellant : Mr.K.Kuppusamy

For Respondents : Mr.D.Bhaskaran for R2
R1 - Not Known

COMMON JUDGMENT

The appellants in both the appeals are the claimants in M.C.O.P.No.1351 of 2001 and M.C.O.P.No.219 of 2002 on the file of Additional District Judge and Special Judge for E.C. Act Cases, Motor Accident Claims Tribunal, Salem. They filed the above claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident that took place on 08.07.2001.

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

On 08.07.2001, the appellants/claimants were travelling in a Lorry bearing Registration No. TN 28 X 6606 on Bangalore – Salem road. When they were nearing Kondaiperiyan Branch road, Theevattipatty, the driver of the Lorry drove the Lorry rashly and negligently and hit another Lorry which was proceeding ahead of the Lorry in which they were travelling as passengers, as a result of which, both the appellants/ claimants sustained injuries all over their body. Immediately, they were rushed to Gokulam Hospital, Salem and then shifted to Madurai Meenakshi Mission Hospital, Madurai.

3.According to the claimants, they were aged about 30 years on the date of accident and were booking agents of Lorry earning a sum of Rs.4500/- per month. It is further contended by them that the accident took place on account of the rash and negligent driving of the driver of the Lorry bearing Registration No. TN 28 X 6606 belonging to the first respondent and that since the Lorry was insured with the Oriental Insurance Company Limited, both of them are jointly and severally liable to pay the compensation to them.

4.The first respondent/owner of the Lorry remained absent before the Tribunal and was set ex-parte. The Oriental Insurance Company Limited filed a counter affidavit denying all the allegations of the appellants/claimants. It is their specific contention that since the appellants/claimants were gratuitous passengers, the owner of the Lorry violated the terms and conditions of the policy and therefore, they are not liable to pay any compensation to the appellants/claimants.

3.The Tribunal vide its order dated 21.06.2004 awarded a compensation of Rs.65,000/- and Rs.63,000/- respectively to the claimants in M.C.O.P.No.1351 of 2001 and M.C.O.P.No.219 of 2002. The Tribunal also awarded interest at the rate of 7.5% p.a. The Tribunal also relied on the decision of the Supreme Court in Oriental Insurance Co. Ltd. -vs- Nanjappan and others reported in 2004(2) CTC 464 and held that the Insurance Company is not liable to pay any compensation to the claimants and the owner of the Lorry namely the first respondent alone is liable to pay compensation to appellants/claimants. Aggrieved over the said orders passed by the Tribunal the appellants have filed the present appeals.

4.Mr.K.Kuppusamy, learned counsel appearing for the appellants relied on the decision in Oriental Insurance Co. Ltd. -vs- Nanjappan and others reported in 2004(2) CTC 464 (also relied upon by the Tribunal) and contended that when the Supreme Court had directed the Insurance Company to pay the amount and then recover the same from the owner of the vehicle, the Tribunal was wrong in dismissing the claim petitions as against the Oriental Insurance Company Limited, the insurer of the Lorry bearing Registration No. TN 28 X 6606.

5.Per Contra, the learned counsel appearing for the second respondent contended that the law on this point is now settled and gratuitous passengers cannot claim any compensation for the injuries sustained by him in a road accident.

> "6. In United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity, the Insurance Company would not be held liable to pay compensation."
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> 7. Section 147 of the Motor Vehicles Act enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are (i) the policy must specify the persons or class of persons, who are insured with respect to their liability to third parties (ii) the policy must specify the extent of liability which must extend to the extent specified in sub Section 2 of Section 147 and (iii) the liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of use of the vehicle in a public place. In fact, Section 147(1)(b)(i) was amended with effect from 14.01.1994 and it includes the owner of the goods or his authorised representative carried in the vehicle".
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> 8. An Insurance Company which faces a claim petition can raise a statutory defence that the vehicle was used for a purpose other than the purpose for which it is intended, in order to avoid its liability. This is one of the defences available to the insurer under Section 149(2)(a)(i)(c) of the Motor Vehicles Act.
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> 9. In the instant case, the Tribunal based on the evidence adduced on both sides has concluded that both the claimants were unauthorized passengers in the goods Lorry. All the observations made by the Tribunal, in this regard are unassailable, infact, in para no.15 of the orders passed by the Tribunal it has been observed

thus:

> "From the evidence of P.W.1, it is clear that he had travelled in the lorry at the time of accident. But he has not stated under what capacity he travelled in the lorry. The P.W.2 alone spoken that he has travelled in the lorry as an Agent of the goods. But he has not produced any documents to show that he was an agent of the goods at the time of accident. Therefore, I am of that view, that they were travelled in the lorry as Passenger."

10. In the decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

"50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the

decisions of the larger benches of the Hon'ble Supreme Court of India."

Therefore, the order passed by the tribunal directing the Insurance company to pay the award amount is liable to be set aside, in as far as the liability of the appellant /Insurance company is concerned.
In the result, the appeal is dismissed."

Since, no evidence was adduced to show that the appellants/claimants were travelling as agents of the goods in the lorry on the date of accident, they have to be construed as unauthorized passengers and thus the Insurance Company is not liable to pay any compensation to them.

6.As regards the quantum of compensation, no arguments were advanced by the learned counsels appearing for both the appellants and the respondents. A perusal of the records shows that the award passed by the Tribunal is perfectly in order and therefore I do not see any reason to upset the award passed by the Tribunal.

7.In the result, the Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna

To

1. The Motor Accident Claims Tribunal Additional District Judge and Special Judge for E.C. Act Cases,
Salem.

2. The Section officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.D.Bhaskaran, Advocate Sr.No.86143

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GP(CO)
CSL/11.03.2019