IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 09.11.2018

DELIVERED ON 20.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1204 of 2010 and
M.P.No.1 of 2010

The Divisional Manager,
United India Insurance Company Limited,
Arni, Thiruvannamalai ... Appellant/2nd respondent

Vs.

1. Saradha
2. Malathi
3. Kothandan
4. Periyakulanthai
5. Sathish
6. Minor Sakthi
   represented by his mother and guardian
   Periyakulanthai
7. Ellammal ... Respondents 1 to 7/ Claimants

8. M.K.Thirunavukkarasu ... 8th respondent/ 1st respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.115 of 2006 dated 30.10.2009 by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Arani, Thiruvannamalai District.

For Appellant : Mr.T.Ravichandran

For Respondents 1 to 7 : Mr.P.Seshadri

Respondent No.8 : Exparte

J U D G M E N T

The Divisional Manager, United India Insurance Company Limited, Arni, Thiruvannamalai has filed the present appeal against the award dated 30.10.2009 passed by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Arni.

2. On 21.05.2006, the deceased Vadamalai loaded the harvest from his farm at Ekambara Nallur Village in the tractor-Trailor bearing registration No. 25V 3961 and TN 25 V 4213 respectively belonging to the first respondent in MCOP No.115 of 2006 and proceeded towards Arni. The deceased and his son were sitting on the top of the paddy bags loaded in the trailor. Due to the rash and negligent driving of the tractor by the driver of the first respondent, the trailor got uncuppled from the tractor and toppled, as a result of which, the deceased sustained grievous injuries all over his body. He was immediately rushed to Government Hospital, Vellore, where he succumbed to injuries.

3. The Tribunal held that the driver of the tractor was responsible for the accident and directed both the owner of the tractor-trailer and the Insurance Company (appellant herein) to jointly and severally pay the award amount of Rs.3,09,000/- to the claimants.

4. Mr.T.Ravichandran,learned counsel for the appellant relied on the decision in C.Pinniammal Vs.Jakkammal and others reported in CDJ 2017 MHC 8075 and contended that since the deceased and his son were sitting on the trailer over the paddy bags, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation.

5. Per contra, Mr.P.Seshadri, learned counsel appearing for the respondents 1 to 7 relied on the decision in Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited reported in 2018 (1) TN MAC 435 (SC) and contended that since the deceased had travelled along with his goods in the trailor at the time of accident, the insurer would be obliged to satisfy the compensation amount awarded to the claimants.

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."

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".

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.

9. In the instant case, the deceased was admittedly sitting on the gunny bags in the tractor (load area) and definitely, he will not be covered under the policy eventhough the goods loaded in the tractor belonged to him. The owner of the goods is permitted to travel in the goods vehicle, but he cannot be permited to travel in the load area of the goods vehicle. He can travel only in the area earmarked for sitting.

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.

10. In the result,

(i) The appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The award amount of Rs.3,09,000/-, passed by the trial court shall be paid by the owner of the tractor-trailer.

(iii) The appellant/Insurance Company is entitled to withdraw the amount, if already deposited by them.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The Subordinate Judge,
Motor Vehicle Accidents Claims Tribunal,
Arni, Thiruvannamalai District.

+1 cc to Mr.T.Ravichandran, Advocate Sr.No.79109
+1 cc to Mr.P.Satheesh Kumar, Advocate Sr.No.79025

CMA.No.1204 of 2010

VGII(CO)
CSL/14.02.2019