IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3708 to 3710 of 2008
in
M.P.Nos.1, 1 & 1 of 2008

Bajaj Allaianz General Insurance Co. Ltd.,
11 (Office 6A) People's Park, 3rd Floor,
Government Arts College Road,
Coimbatore. .. Appellant in all the three Appeals

..Vs..

Ramesh .. 1st respondent in C.M.A.No.3708 of 2008
Nithyanandham .. 1st respondent in C.M.A.No.3709 of 2008
Kuppusamy .. 1st respondent in C.M.A.No.3710 of 2008

G.R.Balaguru .. 2nd respondent in all the three Appeals

The Oriental Insurance Co. Ltd.,
C.C.Complex, 1st Floor,
158-P, New Road, Kovilpatti 628 501.
.. 3rd respondent in all the three Appeals

Thangarajan .. 4th respondent in all the three Appeals
(Respondents 2 & 4 were set exparte in all MCOP's)

Prayers: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Judgment and Decree 10th day of October 2007 made in MCOP.Nos.519, 520 and 521 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional District Judge-cum-Fast Tract Court No.5) at Tiruppur at Coimbatore District.

For Appellant in all these Appeals : Mr.K.Padmanabhan
For Respondent 1 in all these Appeals : Mr.Ma.P.Thangavel
For Respondent 3 in all these appeals : Mr.S.Arun Kumar

Respondents 2 and 4 in all these Appeals have set ex parte

J U D G M E N T

The instant appeals have been filed by the Insurance Company challenging the common Award dated 10.10.2007 passed by the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court-V, Tiruppur at Coimbatore) in MCOP.Nos.519, 520 and 521 of 2005.

The brief facts leading to the filing of the instant appeals are as follows:

2. The first respondent in all these appeals sustained injuries as a result of an accident caused by a Mini Dor Auto bearing registration No.TN39-AB-2079 owned by the fourth respondent in all these Appeals and insured with the Appellant in all these Appeals. The first respondent in all these appeals preferred separate claims before the Motor Accident Claims Tribunal seeking compensation of Rs.5,00,000/- each in MCOP.Nos.519, 520 & 521 of 2005. The Motor Accident Claims Tribunal by its common Award dated 10.10.2007 directed the Appellant to pay a sum of Rs. 55,000/- to the first respondent in CMA.No.3708 of 2008, a sum of Rs.34,000/- to the first respondent in CMA No.3709 of 2008 and a sum of Rs.64,000/- to the first respondent in CMA No.3710 of 2008 and also awarded interest to the first respondents in all the three CMAs at the rate of 7.5% per annum from the date of claim till the date of deposit.

3. Aggrieved by the common Award dated 10.10.2007, the instant appeals have been filed by the Insurance Company.

4. Heard Mr.K.Padmanabhan, learned counsel for the Appellant in all these appeals, Mr.Ma.P.Thangavel, learned counsel for the first respondent in all these appeals and Mr.S.Arun Kumar, learned counsel for the third respondent in all these appeals. The second and fourth respondents have set ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the Appellant in all these Appeals, the insurance company is not liable to pay compensation amount to the respective claimants, since they were gratuitous passengers and therefore, the Appellant is not liable to compensate them for the injuries sustained by them as a result of the accident caused by the insured vehicle.

6. The learned counsel for the Appellant in all these Appeals drew the attention of this Court to the Judgment of this Court in the case of Chenniappan vs. R.Subramani & others reported in 2018 (1) TNMAC 140 and submitted that the facts of

the instant case are identical to the facts of the said referred Judgment. After referring to the said judgment, the learned counsel for the Appellant would submit that the insurance company is not liable to compensate the claimants, if they travelled in the Mini Dor Auto as gratuitous passengers.

7. The learned counsel for the Appellant further drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of United India Insurance Company Limited vs. Suresh.K.K. and another reported in 2008 (2) TN MAC 231 SC and submitted that when no goods were carried in the insured vehicle at the time of the accident, any person travelling along with the driver shall not be covered by the insurance policy.

8. Per contra, learned counsel for the first respondent in all these appeals drew the attention of this Court to the findings of the Tribunal and submitted that the Tribunal after examining the evidence available on record has given a categorical finding that only due to the rash and negligent driving by the driver of the Mini Dor Auto, the accident had happened which resulted in injuries sustained by the respective claimants. The learned counsel for the first respondent in all these appeals also pointed out that the Tribunal has observed in its finding that the Mini Dor Auto was carrying steel Grill items, at the time of the accident. According to him, further, the Tribunal has also observed that the respective claimants were working with the fourth respondent who is the owner of both the insured vehicle and the Grill items.

9. According to the learned counsel for the first respondent in all these appeals, only after recording the said findings, the Tribunal has rightly held that the Appellant is liable to pay compensation to the respective claimants under the impugned Award. The learned counsel for the first respondent in all these appeals also drew the attention of this Court to Section 147(1)(b)(i) and also to Rule 236 of the Tamilnadu Motor Vehicles Rules and submitted that being the authorised representatives of the fourth respondent, who is the owner of the insured vehicle and further, the mini dor vehicle has not carried more than six persons, the Appellant is liable to compensate the claim of the respective claimants and the Tribunal under the impugned Award has rightly awarded compensation to them.

10. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) First Information Report has been registered only against the driver of the Mini Dor Auto which is insured with the Appellant.

b) There is a clear finding given by the Tribunal under the impugned Award, based on the evidence that only due to the rash and negligent driving by the driver of the Mini Dor Auto, the accident had happened which resulted in the injuries sustained by the respective claimants.

c) There is a clear finding given by the Tribunal under the impugned Award that the Mini Dor Auto was carrying steel grill items, at the time of the accidents. The respective claimants took the consistent stand before the Tribunal that both the Grill items and the Mini Dor Auto are owned by the fourth respondent and they are the authorised representatives of the fourth respondent. The Tribunal based on the evidence available on record has given a categorical finding that the respective claimants are the authorised representatives of the fourth respondent and are not Gratuitous passengers.

d) The insurance policy which was marked as Ex.R1 does not disclose, maximum number of persons that the Mini Dor Auto can carry. The registration certificate for the said vehicle has also not been marked as exhibit before the Tribunal to prove that the driver alone can travel in the insured vehicle.

e) The Judgment cited by the learned counsel for the Appellant reported in 2018 (1) TN MAC 140 in the case of Chenniappan vs. R.Subramani & others does not support the case of the Appellant, but in fact supports the case of the first respondents in all these appeals. In the Judgment cited by the learned counsel for the Appellant the facts are identical. Even in that case, the Mini Dor Auto carried 5 people apart from the driver, but the insurance policy gave coverage only for two employees of the owner of the vehicle. Even in that case, the owner of the vehicle remained ex parte before the Tribunal. This Court in the said reported decision held that the persons accompanying the goods were considered as representatives of the owner of the goods and therefore, statutory covers the Section 147 (1) of the Motor Vehicle Rules has to be granted. In that reported decision, this Court held that the insurance company can extricate itself from liability only if it could prove that the claimant had travelled as a passenger in a goods carrier and not one who accompanied goods loaded in the carrier. In the instant case, admittedly as seen from the findings of the Tribunal, the Mini Dor Auto was carrying Grill items belonging to the fourth respondent and it was also the consistent stand of the respective claimants that they are the authorised representatives of the fourth respondent. No contra evidence has been produced by the Appellant before the Tribunal to disprove the statement of the respective claimants.

f) Insofar as the Judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the Appellant in the case of United India Insurance Co. Ltd., vs. Suresh.K.K. and another reported in 2008 (2) TNMAC 231 (SC), the facts of that case are different from the facts of the instant case. In that case, no goods were carried in the insured vehicle at the time of the accident, but in the instant case, admittedly as seen from the findings of the Tribunal, goods were very much available in the insured vehicle at the time of the accident. Therefore, the Judgement relied upon by the learned counsel for the Appellant reported in 2008 (2) TNMAC 231 (SC) is not applicable to the facts of the instant case.

g) The Appellant has also not raised any grounds in this Appeal questioning the quantum of compensation awarded to the respective claimants under the impugned Award.

11. In the light of the above said observations, there is no merit in the instant appeal. Accordingly, the Appeal is dismissed without costs. Consequently, connected miscellaneous petitions are closed.

12. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount already deposited, to the credit of MCOP.Nos.519, 520 & 521 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional District Judge-cum-Fast Tract Court No.5) at Tiruppur at Coimbatore District, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent in CMA.No.3708 of 2008 is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.No.519 of 2005, the first respondent in CMA.No.3709 of 2008 is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.No.520 of 2005 and the first respondent in CMA.No.3710 of 2008 is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.No.521 of 2005 by filing appropriate applications.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   Additional District Judge-cum-Fast Tract Court No.5
   Tiruppur, Coimbatore District

2.The Section Officer, VR Section,
  High Court, Madras.

+1cc to M/S.S.Arunkumar, Advocate Sr.69775
+1cc to M/S.Ma.P.Thangavel, Advocate Sr.69397

C.M.A.Nos.3708 to 3710 of 2008

sj[co]
srg 26/11/2018