IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 05.12.2018
DELIVERED ON 11.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2910 of 2010 and
CMP No.1 of 2010

The Branch Manager,
United India Insurance Company Limited,
Branch Office, No.11-A, M.C.Road,
Ambur, Vellore District 635 002. .... Appellant/2nd respondent

Vs.

1. Gopal
2. Vediammal ....Respondents 1 & 2/Petitioners 1 & 2 /Claimants

3. S.Thirupathi ... 3rd respondent/1st respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 10.01.2008 passed in M.C.O.P.No.578 of 2006 by the Chief Judicial Magistrate No.2, Motor Vehicle Accidents Claims Tribunal, Krishnagiri, Dharmapuri.

For Appellant : Mr.M.J.Vijayaraghavan
For Respondents 1 and 2: Mr.M.Selvam
Third Respondent : No appearance

J U D G M E N T

The appellant is the Branch Manager, United India Insurance Company Limited, Ambur, Vellore District and they filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 questioning their liability to pay compensation amount to the claimant and also the quantum of award passed by the tribunal.

2. The claimants/respondents 1 and 2 filed a claim petition in MCOP No.578 of 2006 before the Chief Judicial Magistrate No2, Motor Vehicle Accident Claims Tribunal, Krishnagiri under Section 166 of the Motor Vehicles Act seeking compensation of Rs.7,00,000/- for the death of their son G.Arjunan.

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3. The brief facts of the claimants are as follows.

On 21.01.2006, after loading bricks, the first claimant and his son deceased Arjunan along with two others were travelling in a tractor-trailer on Krishnagiri- Thiruvannamali Road and the deceased and the first claimant were sitting over the bricks loaded in the tractor. While they were nearing Ganapathi Nagar, the deceased Arjunan fell down from the trailer, due to rash and negligent driving of the driver of the tractor and the trailer ran over the deceased and he died on the way to the hospital. According to the claimants, the rash and negligent driving of the driver of the first respondent was the cause of the accident and that since the tractor and trailer were insured with the present appellant/ Insurance Company, both of them are liable to pay compensation to the claimants.

4. In the trial court, the first respondent, owner of the tractor-trailer remained absent and was set exparte.

5. The Insurance company (2nd respondent)/ appellant resisted the claim petition by filing a counter affidavit before the tribunal.

6. The learned Chief Judicial Magistrate No.2, Krishnagiri, after analysing the evidence on record has held that the deceased Arjunan was travelling in the trailer as a labourer and that the insurance company is liable to pay compensation of Rs.6,00,000/- together with interest at the rate of 7.5% per annum and then recover the same from the owner of the vehicle.

7. Aggrieved over the order passed by the tribunal, the United India Insurance Company Limited/2nd respondent has filed the present appeal contending that since the deceased was a gratuitous passenger , the insurance company is not liable to pay any compensation to him.

8. Mr.M.J.Vijayaraghavan, learned counsel appearing for the appellant relied on the decision in National Insurance Company Limited Vs. V.Chinnamma and others reported in 2004(4) CTC 459 and contended that since the tractor-trailer was not used for agricultural purpose, the appellant/ Insurance company is not liable to pay any compensation to the claimants. It is further contended by him that the insurance policy in the instant case is an " Act Policy " and that since the deceased was travelling in the trailer over the goods, namely bricks, the tribunal was wrong in fastening liability on the insurance company.

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9. Per contra, Mr.M.Selvam, learned counsel appearing for the respondents 1 and 2/ claimants relied on the following decisions

i] Amrit Paul Singh and another Vs. Tata AIG General Ins. Co. Ltd. and others reported in 2018 ACJ 1768

ii] Kalim Khan and others Vs. fimidabee and others reported in 2018 ACJ 2025

iii] P.Prakash Vs. Thandivelu and another reported in 2018 ACJ 1216

iv] National Insurance Company Limited Vs. Raja and others reported in 2018 ACJ 831

v] Reliance General Insurance Company Limited Vs. Savitri Devi and another reported in 2018 ACJ 1854

and contended that since the deceased Arjunan was a legal representative of the owner of the loaded goods in the trailer, the insurance company is liable to pay compensation to him. He would further contend that when a loan man travelling in a tractor-trailer sustained injuries and ultimately died on account of the rash and negligent driving of the driver of the tractor, the tribunal was justified in directing the insurance company to have recourse of pay and recovery.

10. In the decision relied on by the learned counsel appearing for the claimants/respondents 1 and 2 in National Insurance Company Limited Vs. Raja and others reported in 2018 ACJ 831, two loadmen were found to be traveling in a truck and the owner of the truck had paid additional premium covering risk of two workmen. As far as the present case is concerned, the specific stand taken by the appellant/insurance company is that the policy of insurance is only an " Act Policy " and hence the appellant is not liable to pay any compensation for the death of the son of claimants, since he was sitting over the bricks.

11. The above case referred by the learned counsel appearing for the claimants/respondents 1 and 2 would not be applicable in the instant case, because, the deceased, even as per the versions of the claimants, was sitting over the bricks. 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."

12. In the instant case, the deceased was not sitting in the permitted seating capacity and even otherwise, since the policy is only an " Act policy ", the insurance company cannot be held to be liable to pay compensation to the claimants.

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13. 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".

14. 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.

15. In the instant case, the deceased was admittedly sitting over the bricks in the tractor (load area) and definitely, he will not be covered under the policy even though 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 permitted to travel in the load area of the goods vehicle. He can travel only in the area earmarked for sitting.

16. 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

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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 to the claimants and then to recover the same from the owner of the vehicle is liable to be set aside.

17. A perusal of the award passed by the tribunal shows though the tribunal has arrived at the total compensation of Rs.7,91,000/-, restricted the same to Rs.6,00,000/-. This is because the complainants have claimed only a sum of Rs.6,00,000/- by way of compensation. At this juncture, it is relevant to point out that the claimants did not file any cross objection or appeal against the quantum of compensation and in the facts and circumstances of the present case, the quantum of compensation awarded by the tribunal is upheld.

18. In the result,

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

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The third respondent/owner of the tractor-trailer is directed to deposit the entire compensation of Rs.6,00,000/- along with interest at the rate of 7.5% per annum within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the third respondent/owner of the tractor-trailer, the claimants are entitled to withdraw the same, as per the apportionment given by the tribunal, after following due process of law.

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(v) The appellant/Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mst

To

1. The Chief Judicial Magistrate No.2,
Motor Vehicle Accidents Claims Tribunal,
Krishnagiri, Dharmapuri.

2. The Branch Manager,
United India Insurance Company Limited,
Branch Office, No.11-A, M.C.Road,
Ambur, Vellore District 635 002.

Copy to

1 The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.M.J.Vijayaraghavan, Advocate sr 85293.
+1 CC to Mr.M.Selvam, Advocate sr 85326.

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सत्यमेव जयते

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and CMP No.1 of 2010

RJI(CO)
SP(29/01/2019)
A.SK(15/03/2019)

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