IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.734 of 2011
and
M.P.No.1 of 2011

The United India Insurance Co. Ltd.,
3rd Party Motor Claim Cell, No.73-C,
M.T.H. Road, Ambattur,
Chennai – 600 053. ... Appellant/2nd Respondent

..Vs..

1.Muniammal ... Respondents 1 & 2/Petitioners
2.Dhombaraisamy
3.E.Sengan ...3rd Respondents/1st Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in M.C.O.P.No.712 of 2007 dated 02.11.2010 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.4, Ponneri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1 & R2 – No appearance
R3 – Mr.T.P.Sekar

JUDGMENT

The appellant is the United Insurance Company Limited, Ambattur, Chennai. The respondents 1 and 2 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, in MCOP.No.712 of 2007 before the Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court No.IV, Ponneri, seeking compensation of Rs.3,00,000/- for the death of one Thananchezhian, son of claimants 1 and 2.

2. The brief case of the respondents 1 and 2/claimants 1 and 2:-

On 28.11.2004, the claimants as well as deceased Thananchezhian were travelling in a tractor bearing Registration No. TN-20-R-4120 with a trailer bearing Registration No.TN-20-R-

4122. When they were nearing R.N.Kandigai Village, the driver of the tractor drove the vehicle rashly and negligently as a result of which, the tractor toppled and the deceased Thananchezhian fell down and ran over by the tractor. He died on spot. According to the claimants, the rash and negligent driving of the driver of the tractor was the cause of the accident and that since the tractor and trailer were insured with the present appellant, both of them are jointly and severally liable to pay compensation to the claimants.

3. The owner of the tractor and trailor remained absent before the trial Court and was set exparte. The United Insurance Company filed a counter affidavit and contested the claim petition.

4. The trial Court after analysing the evidence on record, awarded a compensation of Rs.3,00,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The various heads under which the compensation awarded by the tribunal are extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Pecuniary loss	1,60,000/-
2.	Non Pecuniary loss	75,000/-
3.	Future prospects	75,000/-
4.	Funeral expenses	5,000/-
Total		3,15,000/- restricted to Rs. 3,00,000/-

5. Aggrieved over the award passed by the trial Court, the United Insurance Company has filed the present appeal contending that when the deceased was a gratuitous passenger in the tractor, the United Insurance Company cannot be held liable to pay any amount.

6. Mr.M.Krishnamoorthy, the learned counsel for the appellant would contend that the policy of insurance is only an Act policy and moreover, the deceased Thananchezhian was

travelling on the mudguard of the tractor and therefore, the Insurance Company cannot be fastened with any liability since there is a clear violation of policy conditions.

7. The learned Additional District Judge, had directed the United Insurance Company to pay the compensation amount to the claimants, on behalf of the owner of the vehicle. The Division Bench of this Court in the decision rendered in Bharati Axa General Insurance Company Limited Vs. Aandi and others, in CMA.Nos.1529 to 1533 of 2015 dated 24.10.2018 has held thus;-

> "50. In fact, we find that in none of the judgments referred to viz., National Insurance Co.Ltd., Swarn Singh & Others reported in MANU/SC/0021/2004: (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd., reported in MANU/SC/0332/2018: (2018) 5 SCC 656, Rani & Others Vs. National Insurance Co.Ltd., & others reported in MANU/SC/0794/2018: 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh and others reported in MANU/SC/0194/2017: (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.
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> 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.

The above decision would squarely apply to the facts of the present case and therefore, I hold that the order passed by the tribunal has to be set aside as regards the liability fastened on the United Insurance Company.

8. A perusal of the award passed by the tribunal shows though the tribunal has arrived at the total compensation of Rs.3,15,000/-, restricted the same to Rs.3,00,000/-. This is because the complainants have claimed only a sum of Rs.3,00,000/-. 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 and the owner of the tractor and trailer bearing Registration Nos.TN-20-R-4122 and TN-20-R-4120 has to pay the entire award amount to the respondents 1 and 2/ claimants 1 and 2. The amount already deposited by the United Insurance Company can be withdrawn by them.

9. 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 and trailer is directed to deposit the entire compensation of Rs.3,00,000/- 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 made by the tribunal, after following due process of law.

(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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1. The Additional District Judge,
   Motor Accident Claims Tribunal
   Fast Track Court No.4,
   Ponneri.

2.The Record Keeper,
  V.R.Section,
  High Court, Madras.

+1cc to Mr.T.P.Sekar, Advocate Sr.84520

C.M.A.No.734 of 2011 and
M.P.No.1 of 2011

kj[co]
srg 04/03/2019