IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.3295 & 3296 of 2003
and CMP Nos.21137 & 21138 of 2003
& 17703 & 17704 of 2004

The Branch Manager,
United India Insurance Co. Ltd.,
Mosque Street, Tindivanam ... Appellant in both CMAs./ 2nd Respondent

..Vs..

1. Dhanalakshmi
2. Sivagami
3. Minor. Loganathan
(R-3 represented by guardian / sister R-1) ...Ist Respondents in CMA.No.3295/2003/Claimants
4. Sekar ...Ist Respondent in CMA.3296/03/ Claimants
5. A.R.Palani ...2nd Respondents in both appeals/Ist Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree, dated 09.07.2002 made in MCOP Nos.767 & 766 of 1996 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Fast Track Court No.II, Tindivanam.

For Appellant in both CMAs : Mr. K.Suryanarayanan
For R-1 to R-3 in CMA No.3295 of 2003 & R-1 in CMA No.3296/2003 : Mr. S.Kaithamalai Kumaran

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the common judgment and decree, dated 09.07.2002 made in MCOP Nos.767 and 766 of 1996 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Fast Track Court No.II, Tindivanam.

2. While MCOP No.766 of 1996 has been filed by the injured / claimant / Sekar claiming a sum of Rs.50,000/- for the grievous injuries sustained by him on left side head, ear and for the fractures on left hand elbow and wrist and other injuries all over the body, MCOP No.767 of 1996 has been filed by the Legal Representatives of Shanthi, (daughters and son) claiming a sum of Rs.2,50,000/- for the death of Shanthi, in an accident that took place on 12.09.1993 at about 11.00 am, while travelling in an lorry bearing Registration No.TMK 4185, which was insured with the appellant herein.

3. Since the accident and the issues involved in these Appeals are common, these Appeals are taken together and a common judgment is passed.

4. The Tribunal, by a common judgment, dated 09.07.2012, after framing issues, recording evidence and marking documents, has ultimately directed respondents 1 and 2 / owner of the vehicle and Insurance Company to pay the compensation of Rs.48,000/- in respect of MCOP No.766 of 1996 to the injured and Rs.1,92,000/- in respect of MCOP No.767 of 1996 to the claimants / LRs of Shanthi / respondents 1 to 3 herein. The finding with regard to the liability is challenged in these Appeals.

5. Heard both sides.

6. The learned counsel appearing for the Insurance Company / appellant herein, in both the Appeals, submitted that the deceased as well as injured travelled in the Goods Carrying Vehicle as gratuitous passengers and hence, the Insurance Company cannot be fastened with the liability to pay the compensation. The learned counsel further submitted that the Tribunal ought to have followed the decision reported in 1999 ACJ 1 [Mallawwa Vs. Oriental Insurance co. Ltd.,] and dismissed the Claim Petitions.

7. The learned counsel appearing for the claimants / respective respondents, in these Appeals, submitted that the award passed by the Claims Tribunal is based on evidence available on records and is perfectly justified and thus, the same does not warrant any interference.

8. This Court has considered the submissions made by the learned counsel for both sides and perused the materials available on record.

9. Under MV Act 1939, the leading decision is reported in 1999 ACJ 1 [supra] and it was held that the Insurer was not

required to cover the risk to gratuitous occupants carried in a goods vehicle as well as those carried for hire or reward in such vehicles. Only such of those persons who were workmen under WC Act 1923 were required to be covered under Sec.95 of the Act.

10. However, in respect of MV Act, 1988 the leading judgment is reported in 2003 ACJ 1 (SC) [New India Assurance Co. Ltd., Vs. Asha Rani] wherein the legal position with regard to gratuitous occupants carried in a goods vehicle, in respect of accidents after 01.07.1989 before 14.11.1994 and after 14.11.1994 was clarified. It was held that before 14.11.1994 gratuitous occupants and those carried for hire or reward after 01.07.1989 were not required to be covered. In respect of accidents after 14.11.1994, it has been held that owners of goods or representatives of owner of goods accompanying them the goods were held entitled for coverage. Those carried for hire or reward were neither covered under MV Act, 1939 nor under MV Act, 1988.

11. In the case reported in 2006 (1) MLJ 154 (Mad) [United India Insurance Co. Ltd., Vs. Selvam], following the decision of Supreme Court in 2004 (2) SCC 1 [Baljit Kaur’s Case] it has been held that in respect of accidents prior to 06.01.2004, the insurance companies shall have to pay and recover. In respect of accidents after 06.01.2004 the Insurance Companies can avoid liability to such persons in toto.

12. Going further, during 2017, one step ahead, in the case of Manuara Khatun vs. Rajesh Kr. Singh, reported in AIR 2017 SC 1204, the Hon'ble Supreme Court has held that the deceased who was travelling in the goods vehicle can be termed as a gratuitous passenger and not covered under the insurance policy and, therefore, Insurance Company was exonerated, but directed to pay the amount of compensation to the claimants with the right to recover the same from the insured. Similar view has been taken in the case of Lal Singh Marabi v/s N.I. Com., reported in 2017 (5) SCC 82.

13. Added to the above, in a recent Division Bench decision of this Court reported in 2018 (2) TN MAC 731 (DB) (Bharathi AXA General Insurance Co. Ltd. v. Anandi and two others) among other things and after analyzing all the decisions on the issues of 'gratuitous passenger' and 'pay and recover', the Division Bench has observed as follows:-

> "52. In fine, all the Appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle., viz., the first respondent in all the Original Petitions and

the Award against the Insurance Company will stand set-aside. However, in view of the fact that the claimants are not before us, we do not impose any costs. ....."

14. Suffice to point out that the said decisions squarely apply to the facts of the case on hand. In this case, it is the admitted case of both sides that the accident had taken place on 12.09.1993. Hence, it is crystal clear that the Insurance Company is liable to pay and recover the compensation from the insured.

15. In the cases on hand, the Tribunal based on the materials, evidence and documents produced has arrived at the just compensation to be payable, as stated supra, by elaborate reasonings. The reasonings recorded by the Tribunal are based on probabilities and weight of evidence, which in the opinion of this Court, are perfectly justified. Hence, the findings of the Tribunal are confirmed as such, in addition to pay and recovery issue. The compensation amount(s) awarded by the Tribunal along with interests and costs are hereby confirmed.

16. In the result, this Civil Miscellaneous Appeals, filed by the Insurance Company, are partly-allowed, directing the Insurance Company / appellant(s) herein to pay the compensation to the respective claimants (at first), with liberty to recover the amount from the insured / owner of the lorry / A.R.Palani. No costs. Consequently, connected Miscellaneous Petitions are closed.

17. The appellant-Insurance Company is directed to deposit the award amount(s) along with interest and costs, less the amount(s) already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the said amount to the Savings Bank Account(s) of the claimant / injured / R-1 in CMA No.3296 of 2003 and legal representatives of the deceased / R-1 to R-3 in CMA No.3295 of 2003, as per the ratio of apportionment made by it, by the award dated 09.07.2002. The minor claimant would have attained majority by now and hence, on such application being taken out by him, the guardianship may be discharged and his share can be transferred to his Savings Bank Account.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

srk

To

1. Motor Accident Claims Tribunal
(Additional District and Sessions Judge)
Fast Track Court No.II, Tindivanam.

copy to

The Section Officer,
V.R.Section, High Court, Madras

+1 cc to Mr.Suryanarayanan Advocate sr46415

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