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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1517 of 2006
and CMP No.6777 of 2006

New India Assurance Co. Ltd.,
Arni ... Appellant/2nd Respondent

..Vs..

1. K.Kumari ...Ist Respondent/Petitioner
2. S.Imthiyass ...2nd Respondents/Istrespondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 29.10.2004 made in MCOP No.289 of 2004 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

For Appellant : Mr. M.Krishnamoorthy
For Respondents : Mr. V.R.Appa Swamee, for R-1,
No Appearance, for R-2.

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J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree, dated 29.10.2004 made in MCOP No.289 of 2004 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

2. MCOP No.289 of 2004 has been filed by the claimant / injured / first respondent herein, claiming a sum of Rs.2,50,000/- for the injuries sustained by her, in an accident that took place on 27.04.2001 at about 12.30 pm, while travelling in a Tata Van bearing Registration No.TN31-A-3533, which was insured with the appellant herein.

3. The Tribunal, by a judgment, dated 29.10.2004, after framing issues, recording evidence, marking documents and relying upon the decisions by both sides, has ultimately directed the insurer and the insured to pay the compensation of Rs.20,000/- to the claimant / first respondent herein with elaborate reasonings. The findings with regard to the liability and quantum are challenged in this Appeal.

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4. Heard both sides.

5. The learned counsel appearing for the Insurance Company / appellant herein submitted that the injured travelled in the Goods Carrying Vehicle as passenger 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 2003 ACJ 1 [New India Assurance Co. Ltd., Vs. Asha Rani] and dismissed the Claim Petition.

6. The learned counsel appearing for the claimant / first respondent herein 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.

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

8. 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.

9. However, in respect of MV Act, 1988 the leading judgment is reported in 2003 ACJ 1 (SC) [supra] 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.

10. 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.

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11. 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.

12. 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. ....."

13. 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 27.04.2001. Hence, it is crystal clear that the Insurance Company is liable to pay and recover the compensation amount from the insured. Hence, the contention of the appellant herein is nullified.

14. In the case on hand, the Tribunal, with elaborate reasonings, has awarded a sum of Rs.20,000/- as total compensation for the injuries sustained by the injured / claimant. 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. The compensation amount awarded by the Tribunal along with interests and costs are hereby confirmed.

15. In the result, this Civil Miscellaneous Appeal, filed by the Insurance Company, is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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16. The appellant-Insurance Company is directed to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the claimant / injured / first respondent herein through RTGS.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

srk
To

1. Motor Accident Claims Tribunal
(Subordinate Judge), Cheyyar.
2. The Section Officer, V.R.Section,
High Court, Madras

Civil Miscellaneous Appeal No.1517 of 2006
and CMP No.6766 of 2006

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