IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1571 of 2007
and
M.P.No.1 of 2007

United India Insurance Co.Ltd.,
Gundoor, Andhra Pradesh
...Appellant/2nd Respondent

Vs

K.C. Munusamy(died)

1.Vadivammal

2.P.Sarala Devi ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 19.12.2005 made in M.C.O.P.No. 389 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.G.Jermiah

For R2 : No Appearance

J U D G M E N T

This appeal is preferred by the Insurance Company as against the award and decree dated 19.12.2005 made in M.C.O.P.No. 389 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

2.The case in brief, is as follows:

On the fateful day, ie. on 16.09.1995 at about 21.30 hours, the the deceased-Munusamy Hari and his friend were travelling in the lorry bearing Registration No.AP-7-V-3049, belonging to the second respondent and insured with the appellant Insurance Company. When the lorry reached near Railway bridge in G.N.T. Road, the lorry driver drove it at high speed in a rash and negligent manner, without assessing the height of the bridge, iron logs at the eastern side and without considering the persons sitting on the top of the vehicle. Due to the same, the deceased was heavily hit by the iron logs and he sustained head injuries and succumbed to the injuries. The mother of the deceased filed a claim petition before the Tribunal. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.3,27,000/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal accepted the contention put forth on behalf of the Insurance Company that there was violation of policy conditions as the deceased travelled in the vehicle as gratuitous passenger and accordingly ordered the Insurance Company to pay the compensation and thereafter to recover the same from the owner of the vehicle.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for both sides, at the outset, submitted that the issue involved in this appeal is covered by a decision of this Court in C.M.A.Nos.2593 to 2599 of 2008, dated 22.07.2019, since in the present case, the Tribunal has given a finding that the deceased had travelled in the goods carriage vehicle as a gratuitous passenger and there was violation of policy conditions by the owner of the vehicle.

5.It is relevant to extract the judgment of this Court in C.M.A.Nos.2593 to 2599 of 2008, dated 22.07.2019, wherein this Court has allowed the C.M.A. filed by the Insurance Company, as follows:

> 6.All the injured deposed before the Tribunal that while they were travelling in the lorry bearing Reg.No.TDA-1456, the accident occurred and the lorry turned turtle. On consideration of the materials and evidence available on record, the Tribunal came to know that they were engaged in building construction work and they were returning in the lorry after completing their work. The Tribunal has also given a finding that had the driver of the lorry was careful and followed the traffic rules in driving the vehicle, the accident would not have occurred. Finally, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of

the lorry, which factual finding is not disputed by the learned counsel on either side.

7.It was put forth on behalf of the Insurance Company before the Tribunal that the lorry is a goods carriage vehicle and the deceased Kalpana and the injured have travelled in the lorry as unauthorised passengers. As per the insurance policy, the driver or owner of the lorry has no right to carry passengers in the goods carriage. It was submitted that 10 persons travelled in the lorry from Mullapalayam to Thiruvalangadu Koot Road, including the driver. Allowing such 9 persons to travel in the lorry by the driver, is against the terms and conditions of the insurance policy and hence the Insurance Company is not liable to pay any compensation to the claimants.

8.Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it has observed that the claimants should not be affected due to the negligence on the part of the lorry driver and since the Insurance Company has not proved that there was no insurance coverage for the vehicle, the Insurance Company has to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle.

9.But the fact remains that there was violation of policy conditions by the owner of the vehicle. Hence, the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), which has been relied upon by the learned counsel for the appellant Insurance Company, will come to their aid.

10.The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words “any person” occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. The Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi (cited supra) has taken note of this aspect and dealt with the issue in detail, by taking note of the various judgments of the Hon'ble Supreme Court and this Court and finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation and to recover the same from the owner of the vehicle, is not correct. The Division Bench has also observed that even though in many cases, the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident, the said factual position alone cannot impel the Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

11.In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the deceased and the injured have travelled as unauthorised passengers. But the Tribunal has ordered for pay and recovery, which, according to this Court is not correct, in view of the law laid down by the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB) (cited supra). Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants.

12.In the result, the appeals are allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in these appeals, is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs.Consequently, the connected miscellaneous petitions are closed.

13.If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

6.In the present case, the Tribunal has ordered the appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle. Since the issue involved in the present case is squarely covered by the above decision of this Court, this appeal is allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in this appeal, is affirmed and there will be an award only against the owner of the vehicle / second respondent herein, and the award against the Insurance Company stands set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

smn/srk

To
1. The Additional District Judge,
   Motor Accidents Claims Tribunal,
   Dharmapuri.

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

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.64751

C.M.A.No.1571 of 2007

VG II (CO)
K.RK. (27.08.2021)