IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.08.2019
CORAM:
THE HON'BLE MR. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.2555 of 2004 and
CMP No.15191 of 2004

United India Insurance Company Limited
Rep by its Branch Manager
Tiruvannamalai : Appellant /2nd Respondent

Vs

1. K.Shanmugam : Respondent /Claimant

2. M/s. Ideal Spinning Mills Limited
No.4, Nehru Nagar
Salem - 4. : Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 31.12.2002 passed in M.C.O.P.No.377 of 1996 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tiruvannamalai.

For Appellant : Mr.J.Raja Kalifulla

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated 31.12.2002, passed by the Motor Accident Claims Tribunal/Additional Subordinate Court, Tiruvannamalai, in M.C.O.P.No.377 of 1996.

2.The case in brief is as follows:

On 10.09.1995, while the first respondent/claimant was travelling in a lorry bearing Reg.No.TN27 5533, belonging to the 2nd respondent herein and insured with the appellant along with others, from Kurumapatti to Salem. At about 7.15 pm, when the lorry was proceeding on Singarapettai-Salem Road, at Mettupatti, it dashed against a Tamarind tree and ultimately capsized, due to the rash and negligent driving on the part of its driver. Due to the said impact, two persons died and others including the first respondent/claimant sustained grievous injuries. Stating so, the first respondent/claimant filed a claim petition seeking compensation of Rs.1,00,000/-. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.63,560/- with interest at 9% pa from the date of petition. Aggrieved over the same, the appellant insurance company has preferred this appeal.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the victims had travelled in the lorry as gratuitous passengers at the time of accident and hence, the appellant insurance company is not liable to pay compensation. In support of the same, he relied upon the decision of the Division Bench of this Court in Bharati AXA General Insurance Co.Ltd. v. Aandi, [2018 (2) TN MAC 731 (DB)].

4.Heard the learned counsel for the appellant and perused the materials available on record. Despite the service of notice, there is no representation on behalf of the respondents. However, considering the fact that the appeal is of the year 2004, this Court is inclined to proceed with this appeal on merits.

5.There is no dispute with regard to the factum of accident and the finding of the Tribunal on negligence on the part of the driver of the vehicle insured with the appellant insurance company. What was disputed herein is the liability of the appellant insurance company to pay compensation.

6.According to the learned counsel for the appellant insurance company, the lorry is a goods carriage vehicle and the injured claimant along with others had travelled in the same as unauthorised passengers in violation of the policy conditions and hence, the insurance company is not liable to pay compensation.

7.Though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it observed that the claimant should not be affected due to the negligence on the part of the lorry driver and accordingly, fastened the liability on the appellant insurance company. But the fact remains that there was violation of policy conditions by the owner of the vehicle, who knowingly permitted the driver to drive the lorry with nearly 60 persons. Hence, in the opinion of this Court, the decision of the Division Bench of this Court in Bharati AXA General Insurance Co.Ltd. Case, (cited supra) will come to the aid of the appellant insurance company.

8.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 view taken by the Tribunal directing the Insurance Company to pay the compensation is not correct. The Division Bench has also observed that even though in many cases, the claimants may not be able to realize 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.

9. 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 had travelled as unauthorised passengers. But the Tribunal has ordered the Insurance company to pay the compensation, 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 claimant.

10. Since the quantum of compensation awarded by the Tribunal is unassailable by the appellant insurance company, the same is hereby confirmed.

11.In the result, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The second respondent/owner of the vehicle is directed to pay the compensation as awarded by the Tribunal, along with interest and costs to the first respondent/claimant, within a period of four weeks from the date of receipt of a copy of this judgment. The appellant insurance company is permited to withdraw the compensation amount, if any already deposited, on filing proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

vrn/rk

To

1.The Motor Accident Claims Tribunal /
Additional Subordinate Court,
Tiruvannamalai.

2. The Section Officer
V.R.Section, Madras High Court
Chennai 104.

+1cc to Mr.J.Rja Kalifulla, Advocate, SR.No.72510.

C.M.A.No.2555 of 2004 and
CMP No.15191 of 2004

EV(CO)
CSR: 20.03.2020
GMY(14/08/2020)