IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1926 of 2007 and
M.P.No.1 of 2007

United India Insurance Company Limited,
Ranipet

...Appellant/2nd Respondent

..Vs..

1.Kamaraj
2.Manimegalai
3.N.Chinnasamy ... Respondents/Petitioner 1 & 2 and 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed in M.C.O.P.No.574 of 2002, dated 28.04.2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance

JUDGMENT

The United India Insurance Company had filed the present appeal against the award passed in M.C.O.P.No.574 of 2002, dated 28.04.2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar.

2. The respondents 1 and 2/claimants filed a claim petition in M.C.O.P.No.574 of 2002, dated 28.04.2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar seeking compensation of Rs.9,50,000/- for the death of their son, Murugan in a road accident that took place on 25.03.2002.

3. On 25.03.2002, at about 04.00 pm, the deceased Murugan was travelling in a tractor bearing Registration No. TN 48 A 3889 belonging to the third respondent. Due to the rash and negligent driving of the driver of the tractor, the deceased Murugan fell down, as a result of which, he sustained grievous injuries all over his body . He was immediately rushed to

Ramachandra Hospital where he was admitted as an inpatient. However, he succumbed to injuries on 07.04.2002.

4.The learned Subordinate Judge, Cheyyar, after analysing the evidence on record, awarded a compensation of Rs.4,64,060/- together with interest at the rate of 9% per annum and directed the present appellant Insurance Company and the third respondent to jointly and severally pay the compensation amount to the respondents 1 and 2/claimants. Aggrieved over the orders passed by the tribunal, the Insurance Company has filed the present appeal questioning their liability to pay compensation to the respondents 1 and 2/claimants.

5.Mr.S.Arun Kumar, learned counsel appearing for the appellant would contend that only the driver of the tractor was permitted to travel in the tractor and since the deceased Murugan travelled in the tractor as a gratuitous passenger, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation to the respondents 1 and 2/claimants.

6. No appearance for the respondents.

7.In the decision in United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity, the Insurance Company would not be held liable to pay compensation."

8.Section 147 of the Motor Vehicles Act enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are (i) the policy must specify the persons or class of persons, who are insured with respect to their liability to third parties (ii) the policy must specify the extent of liability which must extend to the extent specified in sub Section 2 of Section 147 and (iii) the liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of use of the vehicle in a public place. In fact, Section 147(1)(b)(i) was amended with effect from 14.01.1994 and it includes the owner of the goods or his authorised representative carried in the vehicle".

9.In the instant case, the deceased Murugan was sitting in the tractor along with the driver of the tractor and since, there is no seating capacity except the driver of the tractor, he would not be covered under the policy. Therefore, the Insurance Company cannot be held liable to pay compensation to the respondents 1 and 2/claimants.

10.In the decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, a Division Bench of this Court, after analysing various judgment of the Honourable Supreme Court has held thus:

> "48.Coming to the latest judgment viz., Shivaraj v. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company v. Asha Rani and others or National Insurance Company Ltd., v. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj v. Rajendra and another referred to supra.
>
> 49.....
>
> 50.In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh kumar Singh And Others reported in (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.
>
> 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."

11.Therefore, the orders passed by the tribunal directing the Insurance company to pay the compensation amount to the respondents 1 and 2/claimants liable to be set aside.

12.In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The order of the tribunal directing the Insurance Company to pay the quantum is alone set aside.

(iv) The third respondent/owner of the tractor is directed to deposit the entire compensation awarded by the tribunal to the credit of M.C.O.P.No.574 of 2002, dated 28.04.2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the third respondent/owner of the tractor, the respondents 1 and 2/claimants are at liberty to withdraw the same, as apportioned by the tribunal, after following due process of law.

(vi) 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

mbi

To

The Motor Accidents Claims Tribunal,
Sub Court,
Cheyyar.

Copy to

The Section Officer,
VR Section, High Court, Madras. (2 Copies)

+1cc to Mr.S.Arunkumar, Advocate Sr.5156

C.M.A.No.1926 of 2007 and
M.P.No.1 of 2007

pa[co]
srg 28/03/2019