IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1112 of 2008
and
M.P.No.1 of 2008

National Insurance Company Limited,
Thiruchengode ...Appellant/2nd Respondent

Vs.

1. Panneer
2. R.V.Rajendran ... Respondent/Petitioner/1st Respondent

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders passed in M.C.O.P.No.481 of 1999 dated 05.01.2005 by the Subordinate Judge, Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr. Arunkumar
For Respondents : No appearance

J U D G M E N T

The National Insurance Company Limited, Thiruchengode, who is the 2nd respondent in MCOP No.481 of 1999 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Thiruchengode has filed the present appeal questioning their liability to pay compensation to the claimant awarded by the tribunal.

2. The first respondent / claimant has filed the above claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 06.11.1998.

3. The case of the first respondent/claimant is that on 06.11.1998, when he was traveling in a tempo van bearing registration No. TN 43 1807, the driver of the tempo van drove the vehicle rashly and negligently, as a result of which, the tempo van toppled and the claimant sustained injuries all over his body and was admitted as an inpatient at Government Hospital, Dharmapuri. According to the claimant, the rash and negligent driving of the driver of the tempo van was the cause

of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

4. The owner of the tempo van remained absent before the tribunal and therefore, he was set exparte. The 2nd respondent/ present appellant contested the claim petition.

5. The Subordinate Judge, Motor Accident Claims Tribunal, Thiruchengode, after analysing the evidence on record, awarded a compensation 3,09,435/- along with interest at the rate of 9% p.a. from the date of claim petition till the date of deposit. Aggrieved over the orders passed by the tribunal, the present appeal is filed by the National Insurance Company Limited.

6. Mr.Arunkumar, learned counsel appearing for the appellant contended that since it is an admitted case that the claimant travelled in the tempo van as gratuitous passenger, the insurance company cannot be held liable to pay compensation to the claimant. He would further contend that the tribunal was wrong in directing the insurance company to pay compensation amount at the first instance and thereafter, recover the same from the owner of the tempo van, cannot be sustained in the light of the various judgments of this court and Apex Court.

7. No appearance on behalf of the respondents.

8. In a 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."

9. In the present case, the claimant was not sitting within the permitted seating capacity. 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 judgments of the Honourable Supreme Court has held thus.

> 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.
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> 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.

Therefore, the orders passed by the tribunal directing the Insurance company to pay the compensation amount to the claimants and then to recover the same from the owner of the vehicle is liable to be set aside.

10. The insurance company has not questioned the quantum of compensation awarded by the tribunal. Therefore, quantum of compensation awarded by the tribunal is upheld.

11. In the result,

(i) The appeal is allowed. No costs. The connected miscellaneous petition is closed.

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

(iii) The second respondent herein/owner of the tempo van is directed to deposit the entire compensation of Rs.3,09,435/- along with interest at the rate of 7.5% per annum within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent/owner of the tempo van, the claimant is entitled to withdraw the same, after following due process of law.

(v) 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.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mst

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal, Dharmapuri.

2.The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S. Arunkumar, Advocate sr 76989.

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M.P.No.1 of 2008

KK(CO)
SP(12/02/200)