IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.2449 OF 2007

The New India Assurance Co.Ltd.,
Perambalur. ... Appellant/Second Respondent

Vs

1.Mrs.Mahesh
2.Rajendran
3.Pushpa
4.M.Ramasamy
(R-4 set exparte in the Lower Court). ... Respondents/Petitioners 1 to 3 and First Respondent

Prayer:-
Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 27.02.2004 made in MCOP No.230 of 2003 on the file of the Motor Accidents Claims Tribunal (District Judge) at Perambalur.

For Appellant : Ms.R.Sree Vidhya

For Respondents : No appearance for R1, R2 & R4

JUDGMENT

The facts of the case in brief, are as follows:

On 18.04.2003 at about 13.30 hours, the first respondent's husband by name Muthu @ Kandasamy was travelling in a tractor bearing Reg.No.TN-46-B-8658, belonging to the fourth respondent and insured with the appellant Insurance Company, as a loadman, in the Perali Village Road, Perambalur District. The tractor was driven by its driver in a rash and negligent manner at high speed. When the tractor reached near Perali Rice Mill, due to the rash driving of the driver of the tractor, the said Muthu @ Kandasamy fell down from the tractor and consequently the tractor wheels ran over the said Muthu @ Kandasamy. Due to the said impact, the said Muthu @ Kandasamy sustained multiple and grievous injuries all over the body. He was admitted in the Government General Hospital, Trichy and thereafter he succumbed to the injuries on 01.05.2003. The legal heirs of the deceased / respondents 1 to 3, filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,41,500/- with interest at 9% per annum from the date of petition.

2.Challenging the award passed by the Tribunal, the appellant Insurance Company has come up with this appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in holding that the Insurance Company is liable to pay compensation to the claimants. She submitted that the fourth respondent /owner of the tractor had violated the Policy Conditions, by travelling in the mudguard of the tractor and such risk of a passenger is not required to be covered under Section 147 of the Motor Vehicles Act. She also submitted that the Tribunal failed to note that only for the purpose of claiming compensation from the Insurance Company, it has been alleged by the claimants that the deceased travelled as a loadman in the tractor. The learned counsel relied upon the decision of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), in support of her contention.

4.When this appeal was taken up on 22.07.2019, this Court permitted the appellant to serve notice to the unserved respondents through paper publication indicating the date of hearing of this appeal as 19.08.2019. Even after effecting such paper publication, there is no representation on behalf of the respondents 1 to 3/claimants, today.

5.Heard the learned counsel for the appellant Insurance Company and perused the materials available on record carefully and meticulously.

6.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tractor owned by the fourth respondent, is not disputed by both the sides.

7.It was put forth on behalf of the Insurance Company before the Tribunal that the deceased travelled in the tractor only as a passenger and not as a loadman; that the deceased travelled in the mudguard of the tractor and therefore, the Insurance Company is not liable to pay any compensation to the claimants, since there was violation of policy conditions. But the Tribunal observed that the Insurance Company is liable to pay compensation since the deceased travelled as a loadman and also he is a third party. Accordingly, the Tribunal directed the owner of the vehicle and the Insurance Company to pay compensation to the claimants jointly and severally.

8.But the fact remains that there was violation of policy conditions by the owner of the vehicle, since P.W.2-Owner of the vehicle, himself deposed before the Tribunal that on 18.04.2003 at about 1.30 p.m., P.W.2 and the deceased were travelling as a loadman in the tractor and they were sitting on the engine of the tractor. Since the owner of the tractor himself deposed that they were sitting on the engine of the tractor, it is crystal clear 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.

9.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.

10.In the case on hand, it is very clear that there was violation of policy conditions. But the Tribunal has ordered the Insurance Company and the owner of the vehicle to pay the compensation jointly and severally, 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.

11.In the result, the 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 award only against the owner of the vehicle and the award against the Insurance Company stands set aside. No costs.

12.If any amount 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
   (District Judge) at Perambalur.

2. The Section Officer,
   VR Section, Madras High Court.

+1cc to Ms.R.Sree Vidhya, Advocate, S.R.No.71544

C.M.A.No.2449 of 2007

AD(CO)
CS/19/11/2020