IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.2524 to 2532 of 2005 and
CMP Nos.13296 to 13304 of 2005

CMA No.2524/2005:

National Insurance Company Limited
Coimbatore .... Appellant in all CMAs

Vs.

1.Angammal ...1st Respondent/Petitioner in CMA.2524/05
1.Pavayeeammal ...1st Respondent/Petitioner in CMA.2525/05
1.Rajasekaran ...1st Respondent/Petitioner in CMA.2526/05
1.Balamani ...1st Respondent/Petitioner in CMA.2527/05
1.Minor BhoopalaKrishnan
(Minor rep.by guardian & next friend mother Saradha)
...1st Respondent/Petitioner in CMA.2528/05
1.Saradha ...1st Respondent/Petitioner in CMA.2529/05
1.K.Santha ...1st Respondent/Petitioner in CMA.2530/05
1.Rani ...1st Respondent/Petitioner in CMA.2531/05
1.Saraswarthi ...1st Respondent/Petitioner in CMA.2532/05

2. E.Sekar ...2nd Respondent/Respondent in all CMAS

3. Mani ....3rd Respondent/Respondent in all CMAs

Prayer in CMA No.2524/2005: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 24.12.2003 passed in M.C.O.P.No.503 of 2003 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Court, Erode.

For Appellant : Mr.S.Arunkumar (in all CMAs)

For R1 : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are directed against the common judgment dated 24.12.2003 passed by the Claims Tribunal in M.C.O.P.Nos.503 to 512 of 2003 respectively.

2.Since the issues involved in all these appeals are one and the same, they are heard together and are disposed of, by this Common Judgment.

3.The case in brief is as follows:

On 16.07.2002, the first respondent(s)/claimants were travelling as passengers in a share Auto bearing Reg.No.TN 33 Q 1618, from Periyar Nagar at Erode to Vellapethampalayam. When the said share auto was proceeding near Railway colony Municipal Higher Secondary School, its driver drove the vehicle in a rash and negligent manner, due to which, the Share Auto capsized. As a result of the same, the passengers sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the Share Auto, the first respondent (s)/claimants filed claim petitions claiming compensation. The Motor Accident Claims Tribunal, I Additional Subordinate Court, Erode, has awarded a total compensation of Rs.12,500/-, Rs.36,250/-, Rs.20,000/-, Rs.17,500/-, Rs.32,200/-, Rs.17,500/-, Rs.15,000/-, Rs.7,500/-, Rs.17,500/-, Rs.12,500/- and Rs.7,500/- respectively to the 1st respondent(s) herein / Claimants. Aggrieved over the same, the appellant insurance company has filed these appeals.

4.The learned counsel for the appellant / Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. The learned counsel mainly contended that the first respondent(s)/ claimants had travelled in the share auto as gratuitous passengers in violation of the policy conditions and hence, the appellant insurance company is not liable to pay any compensation. The learned counsel further submitted that if at all the compensation has to be payable by the Insurance Company, liberty should be given to the insurance company to recover the same from the owner of the vehicle.

5.Heard the learned counsel for the appellant and perused the materials available on record. Despite the service of notice and the name of the first respondent(s)/claimants having been printed in the cause list, there is no representation on their behalf.

6.With regard to negligence, P.W.1/claimant in MCOP.No.503/2003 has deposed in her evidence that on the date of accident, the driver of the share auto drove the vehicle in a rash and negligent manner, due to which, the share auto capsized. P.W.2 to P.W.10 eye witnesses to the accident have deposed about the manner of accident in line with the evidence of P.W.1. The Tribunal has taken into consideration the oral evidence of the witnesses and documentary evidence viz., First Information Report (Ex.P.1), Charge Sheet (Ex.P.2) and Motor Vehicle Inspector's Report (Ex.P.4) and narrated about the proximate cause and the mode of speed, in which the share Auto was plying and rightly fixed the negligence on the part of the driver of the Share Auto, which finding this Court is not inclined to interfere.

7.The main contention of the learned counsel for the appellant is that the first respondent(s)/claimants had travelled in the offending vehicle as gratuitous passengers and hence, the appellant insurance company is not liable to pay compensation; even if at all the compensation has to be payable by the Insurance Company, liberty should be given to the insurance company to recover the same from the owner of the vehicle, whereas, in the present case, the Tribunal has failed to order pay and recovery.

8.This Court is of the view that the contention with regard to the gratuitous occupants / passengers, cannot hold good now, since the issue was settled through the decision reported in 2003 ACJ 1 (SC), wherein, it is stated that, in respect of accidents after 01.07.1989 before 14.11.1994 and after 14.11.1994 was clarified. It was held that before 14.11.1994 gratuitous occupants and those carried for hire or reward after 01.07.1989 were not required to be covered. In respect of accidents after 14.11.1994, it has been held that owners of goods or representatives of owner of goods accompanying them the goods were held entitled for coverage. Those carried for hire or reward were neither covered under the Motor Vehicles Act, 1939 nor under the Motor Vehicles Act, 1988. Further more, in the case reported in 2006 (1) MLJ 154 (Mad) [United India Insurance Co. Ltd., Vs. Selvam], following the decision of Supreme Court in 2004 (2) SCC 1 [Baljit Kaur's Case], it has been held that in respect of accidents prior to 06.01.2004, the insurance companies shall have to pay and recover. In respect of accidents after 06.01.2004 the Insurance Companies can avoid liability to such persons in toto.

9.Going further, during 2017, one step ahead, in the case of Manuara Khatun vs. Rajesh Kr. Singh, reported in AIR 2017 SC 1204, the Hon'ble Supreme Court has held that the deceased who was travelling in the goods vehicle can be termed as a gratuitous passenger and not covered under the insurance policy and, therefore, Insurance Company was exonerated, but directed to pay the amount of compensation to the claimants with the right to recover the same from the insured. Similar view has been taken in the case of Lal Singh Marabi v. N.I. Com., reported in 2017 (5) SCC 82.

10.Added to the above, in a recent Division Bench decision of this Court reported in 2018 (2) TN MAC 731 (DB) (Bharathi AXA General Insurance Co. Ltd. v. Anandi and two others) among other things and after analyzing all the decisions on the issues of 'gratuitous passenger' and 'pay and recover', the Division Bench has observed as follows:-

> "52. In fine, all the Appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle., viz., the first respondent in all the Original Petitions and the Award against the Insurance Company will stand set-aside. However, in view of the fact that the claimants are not before us, we do not impose any costs. ....."

11.Suffice to point out that the aforesaid decisions squarely apply to the facts of the case on hand. In these cases, it is the admitted case of both sides that the accident had taken place on 16.07.2002. Hence, it is crystal clear that the Insurance Company is liable to pay compensation to the claimants and recover the same from the insured.

12.In view of the foregoing reasonings, the finding of the Tribunal with regard to liability is hereby modified to the effect that the appellant insurance company shall pay the compensation to the claimants initially and thereafter recover the same from the owner of the vehicle.

13.Since the quantum of compensation awarded by the Tribunal is unassailable by the appellant herein, the same is hereby confirmed as such.

14.In the result, all these Civil Miscellaneous Appeals, are disposed of, directing the appellant Insurance Company to pay the compensation to the claimants / first respondent herein (at first), with liberty to recover the same from the Insurer / owner of the vehicle. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.The appellant-Insurance Company is directed to deposit the award amounts along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account(s) of the claimants / injured / first respondent(s) herein through RTGS, one week thereafter.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

srk / vrn /rk

To

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

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

+1cc to M/s.S.Arunkumar, Advocate SR.54611

C.M.A.Nos.2524 to 2532 of 2005
and
CMP Nos.13296 to 13304 of 2005

CNR(CO)
CB(17/02/2020)