

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.No.280 of 2006

and

CMP.No.913 of 2006

The Manager,
National Insurance Co. Ltd.,
Villupuram.

...Appellant/2nd Respondent

.Vs.

1.Malliga

2.Dulasi

3.Ashoth Raman

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.07.2005 passed in MCOP.No.409 of 2004 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.D.S.Thirumavalavan for R1 and R2
No appearance for R3

JUDGMENT

The Manager, National Insurance Company Limited, Villupuram has filed the present appeal against the award dated 25.07.2005 passed by the Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore.

2. On 26.12.2002, the deceased Ganapathy was travelling as a cleaner in a tractor bearing Registration No. TAY 6456. The said tractor was attached with a trailer bearing Registration No.MDF 4247, both belonging to the third respondent and insured with the present appellant. Due to the rash and negligent driving of the third respondent's driver on Nallarasanpettai - Naraiyur road, the deceased Ganapathy fell down from the tractor and the right wheel of the trailer ran over him, as a result of

which, Ganapathy sustained multiple injuries and died on the spot. On the date of the accident, the deceased was aged about 20 years and the claimants who are his parents had filed the claim petition in MCOP.No.409 of 2004 before the Motor Accidents Claims Tribunal / Principal District Judge, Cuddalore. According to the claimants, the rash and negligent driving of the driver of the third respondent was the cause of the accident and that since the tractor and trailer were insured with the present appellant, both of them are jointly and severally liable to pay compensation to them.

3. The learned Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore held that the driver of the tractor and trailer was responsible for the accident and directed the owner of the tractor and trailer and the National Insurance Company Limited to pay the award amount of Rs.2,94,000/- together with interest at the rate of 9% per annum to the claimants jointly and severally.

4. Mr.S.Arunkumar, learned counsel appearing for the appellant contended that since the deceased had travelled in the tractor at the time of the accident, the Insurance Company cannot be made liable to pay the compensation amount.

5. Per contra, Mr.D.S.Thirumavalavan, learned counsel appearing for the claimants contended that the deceased was travelling as a cleaner in the tractor and he was sitting on the mud guard of the tractor. He would further contend that as rightly pointed out by the tribunal, the Insurance Company is liable to pay compensation to the claimants.

6. 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.

7. 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".

8. The Insurance Company which faces a claim petition can raise a statutory defence that the vehicle was used for a purpose other than the purpose for which it is intended, in order to avoid its liability. This is one of the defences available to the insurer under Section 149(2)(a)(i)(c) of the Motor Vehicles Act.

9. In the instant case, the deceased was admittedly sitting on the mud guard of the tractor and definitely he would not be covered under the Policy. 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.

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 order passed by the tribunal directing the Insurance company to pay the award amount is liable to be set aside, in so far as the liability of the appellant / National Insurance company Limited is concerned. There is no dispute with regard to the quantum of compensation and therefore, the sum of Rs.2,94,000/- awarded by the tribunal is upheld.

10. 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 orders passed by the tribunal directing the Insurance Company to pay the compensation amount to the claimants is set aside.

(iv) The third respondent, owner of the tractor and trailer is directed to deposit the entire compensation amount awarded by the tribunal i.e., Rs.2,94,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.409 of 2004 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents 1 and 2 / claimants is at liberty to withdraw the same as per the apportionment made by the tribunal, after following due process of law.

(vi) The appellant/Insurance Company is entitled to withdraw the amount already deposited by them, if any.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

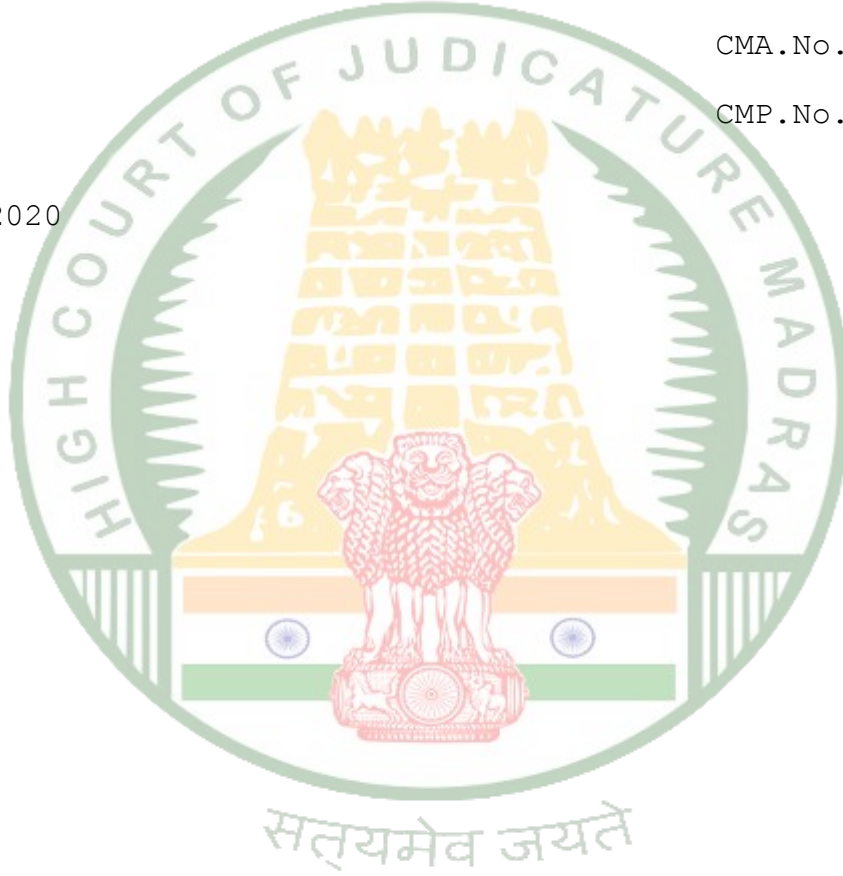
1. The Motor Accidents Claims Tribunal,
The Principal District Court,
Cuddalore.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.76580

+lcc to Mr.D.S.Thirumavalavan, Advocate, S.R.No.77055

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and
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PP (CO)
CS/19/10/2020



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