IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2780 to 2783 of 2007
and
M.P.Nos.1, 1, 1, and 1 of 2007

The Oriental Insurance Co. Ltd.,
Chamrajpet Branch,
19/1, First Floor, III Cross,
Chikkanna Gardens Shankar Mutt Compound,
Chamrajpet, Bangalore - 4.

... Appellant in all the appeals/
2nd respondent in all the MCOP's

Vs

1. Murugan

2. Messers Srinidhi Tranchem (I) Private Limited,
rep.by its Director, III Floor,
5th Main, 2n cross, Gandhi Nagar,
Bangalore - 9.
(R2 was set exparte before the Tribunal)

... Respondents in C.M.A.No.2780 of 2007

1. Jai Sankar

2. Messers Srinidhi Tranchem (I) Private Limited,
rep.by its Director, III Floor,
5th Main, 2n cross, Gandhi Nagar,
Bangalore - 9.
(R2 was set exparte before the Tribunal)

... Respondents in C.M.A.No.2781 of 2007

1. Govindan

2. Messers Srinidhi Tranchem (I) Private Limited,
rep.by its Director, III Floor,
5th Main, 2n cross, Gandhi Nagar,
Bangalore - 9.
(R2 was set exparte before the Tribunal)

... Respondents in C.M.A.No.2782 of 2007

1. Senthilkumar

2. Messers Srinidhi Tranchem (I) Private Limited,
rep.by its Director, III Floor,
5th Main, 2n cross, Gandhi Nagar,
Bangalore - 9.
(R2 was set exparte before the Tribunal)

... Respondents in C.M.A.No.2783 of 2007

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2006 made in M.A.C.T.O.P.Nos.717 to 719 and 721 of 2003 respectively, on the file of the Motor Accidents Claims Tribunal (I Additional District Judge(incharge)) at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy in all CMAs

For R1 : Mr.P.Mani in all CMAs

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

Since all these Civil Miscellaneous Appeals have been filed against the common Judgment dated 30.11.2006 arising out of the same accident, they were heard together and are disposed of, by this common judgment.

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

On 08.09.2002 at about 2.00pm, the first respondent(s)/ claimant(s)/injured were travelling in a lorry bearing registration No.KA.02 -B 2475 belonging to the second respondent and insured with the appellant insurance company. Due to rash and negligent act on the part of the driver, the said lorry turned turtle near Sonarahalli bridge. As a result of the same, all the persons travelled therein sustained grievous injuries. The injured have filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	M.A.C.T. O.P.No.	Compensation claimed by the injured (Rs.)	Amount of compensation awarded by the Tribunal (Rs.)
2780 of 2007	717/2003	2,00,000/-	47,800/-
2781 of 2007	718/2003	3,00,000/-	64,400/-
2782 of 2007	719/2003	3,00,000/-	43,400/-

CMA No.	M.A.C.T. O.P.No.	Compensation claimed by the injured (Rs.)	Amount of compensation awarded by the Tribunal (Rs.)
2783 of 2007	721/2003	3,00,000/-	62,600/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions.

3.Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that when the driver of the lorry did not possess valid and effective licence at the time of accident and the victims were travelling in the lorry as gratuitous passengers, the Tribunal ought to have exonerated the Insurance Company from payment of compensation, whereas, it has erred in holding that the Insurance Company was liable to pay compensation to the claimants and thereafter, recover the same from the owner of the vehicle. Hence, the learned counsel sought to set aside the said finding of the Tribunal. In this connection, he relied upon 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).

5.The learned counsel for the first respondent(s)/claimant (s) in these appeals, submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the just, fair and reasonable compensation and hence, the same need not be interfered with, by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.There is no dispute with regard to the date on which and the vehicle involved in the accident. What was disputed is the liability of the insurance company to pay compensation to the claimant(s) and recover the same from the owner of the vehicle. The first respondent(s)/claimant(s) examined themselves as P.W.1 to P.W.4 and they deposed that on the date of accident, they had travelled in the lorry bearing Registration No.K.A.02.B.2475 and due to rash and negligent driving of the driver of the lorry, the accident had happened. On the side of the appellant insurance company, R.W1 to R.W.4 were examined, according to them, the vehicle involved in the accident was a tanker lorry meant for carrying goods and the injured had travelled as unauthorised passengers, in violation of the policy conditions.

8.It was put forth by the learned counsel for the appellant Insurance Company before the Tribunal that the lorry is a goods carriage vehicle and the injured had travelled in the lorry as unauthorised passengers; as per the insurance policy, the driver or owner of the lorry has no right to carry passengers in the goods carriage; allowing the injured to travel in the lorry by the driver, is against the terms and conditions of the insurance policy; and hence, the Insurance Company is not liable to pay any compensation to the claimants.

9.Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it has observed that the claimant(s) should not be affected due to the negligence on the part of the lorry driver and since, the Insurance Company has not proved that there was no insurance coverage for the vehicle, the Insurance Company has to pay the compensation to the claimant(s) and thereafter recover the same from the owner of the vehicle.

10.But the fact remains 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.

11.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.

12.In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the injured have travelled as unauthorised passengers. But the Tribunal has ordered for pay and recovery, 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 claimant(s).

13.In the result, all the appeals are allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in these appeals, is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

14.If any amounts had already been deposited by the Insurance Company, the appellant Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

av

To

The I Additional District Judge(Incharge),
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy To

The Section Officer,
VR Section, Madras High Court.

+3cc to Mr.P.Mani, Advocate, S.R.No. 49578 to 49580

C.M.A.Nos.2780 to 2783 of 2007

VG I(CO)
GN(05/03/2020)