IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1778 of 2008
and M.P.No.1 of 2008

1.Aarayee
2.Jothi ... Appellants/Petitioners

..Vs..

1.The Manager,
Indian Bank,
Madukarai.

2.S.Dhanaboopathi

3.New India Assurance Company Ltd.,
127.A, Thiru Vi Ka Road,
Villupuram. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 21.08.2003 made in M.C.O.P.No.136 of 2002 on the file of the Motor Accident Claims Tribunal, Villupuram.

For Appellants : Mr.R.Arundattan

For Respondents : Mr.J.Chandran for R3
R1 & 2 - No Appearance

JUDGMENT

The appellants are the claimants in M.C.O.P.No.136 of 2002 on the file of the Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Villupuram. They have filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/-, for the death of one Annamalai, the husband of the first claimant and father of the second claimant, in a road accident that took place on 18.02.2002.

2.The brief case of the appellants is as follows:
On 18.02.2002 the deceased Annamalai was travelling in a Tractor bearing Registration No.PY - 01/C.2412 near Weavers

Quarters, Siruvanthadu. At about 06.30 p.m., the driver of the tractor bearing Registration No.PY - 01/C.2412 drove the tractor rashly and negligently, as a result of which, the deceased Annamalai fell down from the tractor and died on spot.

3.According to the appellants/claimants, the rash and negligent driving of the driver of the tractor bearing Registration No. PY - 01/C.2412 was the cause of the accident and that since the owner of the tractor (second respondent) insured the vehicle with the third respondent, the New India Assurance Company Limited both of them are jointly and severally liable to pay the compensation to them.

4.All the respondents contested the claim petition by filing their respective counters. The learned Judge, Motor Accident Claims Tribunal, Villupuram, after analysing the evidence on record, dismissed the claim petition holding that the deceased Annamalai did not die on account of the road accident.

5.Aggrieved over the said orders passed by the tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Mr.R.Arundattan, learned counsel appearing for the appellants would contend that, though the First Information Report (Ex.P1) was registered the very next day of the accident and the Inspector of Police, Valavanur Police Station, after completing the investigation laid a charge sheet in C.C.No.163 of 2003 before the learned Judicial Magistrate No.II, Villupuram, against the driver of the tractor bearing Registration No.PY - 01/C.2412 for an offence punishable under Section 304(A) IPC, the tribunal has held that the deceased did not die on account of a road accident.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the third respondent, the New India Assurance Company Limited, Villupuram would contend that the tribunal after considering the evidence on record, dismissed the claim petition and therefore the appeal is liable to be dismissed.

8.It is pertinent to point out though Thiru.Nagaraj (R.W.1) the driver of the tractor had deposed before the tribunal that the deceased Annamalai did not die out of the road accident, had completely taken a U-turn before the learned Judicial Magistrate No.II, Villupuram by pleading guilty of the offence punishable under Section 304(A) IPC and also paid a fine of Rs.3500/-. Therefore his evidence is not trust worthy. Further more, the Inspector of Police, Valavanoor Police Station had done an investigation and laid a charge sheet against the driver of the tractor bearing Registration No.PY - 01/C.2412 belonging to the second respondent. In fact the second respondent, though was served with a notice, did not appear before this Court.

9.Thiru.Elango (R.W.3), the Investigator appointed by the Insurance Company in his report (Ex.R1) had stated that the deceased Annamalai under the influence of alcohol fell down while crossing bund and sustained injuries and subsequently died. The tribunal based on the evidence of the driver of the tractor as well as the report (Ex.R1) of the Investigator (R.W.3) dismissed the claim petition. It is relevant to point out that the Investigator (R.W.3) did not record the evidence of the persons whom he enquired and his opinion in the absence of evidence, cannot be considered. Moreover, the Inspector of Police, Valavanoor Police Station had laid a charge sheet against the driver of the tractor for the offence punishable under Section 304(A) IPC and the driver also pleaded guilty of the offence and paid the fine amount imposed by the Judicial Magistrate. In the facts and circumstances, I hold that the deceased Annamalai died due to the rash and negligent driving of the driver of the tractor bearing Registration No.PY - 01/C.2412.

10.Admittedly, in the instant case, the deceased Annamalai was travelling on the mud-guard of the tractor. Mr.R.Arundattan, learned counsel appearing for the appellants relied on the decision in Sivaraj -vs- Rajendra and another reported in the Civil Appeal Nos.8278 and 8279 of 2018 and contended that since the deceased Annamalai was travelling as a coolie in the tractor and not as a gratuitous passenger, the Insurance Company should be directed to pay the compensation amount to the claimant in the first instance and then recover the same from the owner of the tractor namely the second respondent.

11.The 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."

12.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.

13.An 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.

14.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 judgment of the Honourable Supreme Court has held thus:

> "48.Coming to the latest judgment viz., Shivaraj v. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company v. Asha Rani and others or National Insurance Company Ltd., v. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj v. Rajendra and another referred to supra.
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> 49.....
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> "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 Insurance Company cannot be held liable to pay compensation to the claimants.

15.The tribunal though dismissed the claim petition has held that the claimants are entitled for a compensation of Rs.3,12,000/-. The case of the appellants/claimants is that the deceased was aged about 50 years on the date of accident. Since the accident took place in the year 2002, the notional income of the deceased is fixed as Rs.3000/- per month. As per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 the proper multiplier to be adopted in the instant case is 13.

16.Since, the deceased was aged 50 years on the date of accident, as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 10% has to be added towards future prospects of the deceased Annamalai. Therefore, Rs.3,000/- + Rs.300/- (10% of Rs.3,000/-) = Rs.3,300/- is taken up for calculating loss of dependency. Since, there were two dependents depending on the income of the deceased Annamalai, 1/3 has to be deducted towards his personal expenses. Thus the loss of dependency is calculated as follows:

= Rs.3,300/- x 12 x 13 (-) 1/3 deduction
= Rs.5,14,800/- (-) Rs.1,71,600/- (1/3 deduction)
= Rs.3,43,200/-

Apart from this amount, the appellants/claimants are entitled to a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium, funeral expenses and loss of estate respectively. Thus the compensation awarded to the appellants/claimants under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of dependency	Rs.3,43,200/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of Consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.4,13,200/-

The compensation of Rs.4,13,000/- shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

17.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii)The second respondent, the owner of the tractor bearing Registration No.PY - 01/C.2412 is directed to deposit the entire compensation of Rs.4,13,200/- 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 M.C.O.P.No.136 of 2002 dated 21.08.2003 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Villupuram within a period of four weeks from the date of receipt of a copy of this Order.

(iii)The third respondent/Insurance Company is exonerated from paying the compensation amount.

(iv)The appellants are directed to pay necessary Court fee for the compensation amount.

(v)The first appellant/first claimant is entitled to a sum of Rs.3,00,000/- together with accrued interest and cost and the second appellant/second claimant is entitled to a sum of Rs.1,13,200/-

(vi)On such deposit being made by the second respondent, the owner of the tractor, the appellants/claimants are at liberty to withdraw the same.

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

True Copy

Sub-Assistant Registrar

rna
To
1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Villupuram.

2.S.Dhanaboopathi,
S/o.Sarangapani,
9, Mandaveli,
Madukarai,
Pondicherry State.

3.The Section officer
High Court, Madras 104.

+1 CC to Mr.C. Munusamy, Advocate sr 1157.

C.M.A.No.1778 of 2008
and M.P.No.1 of 2008

PP(CO)
SP(30/08/2019)