IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2019

PRONOUNCED ON : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2864 to 2866 of 2005
and C.M.P.Nos.14922 to 14924 of 2005

C.M.A.No.2864 of 2005:

National Insurance Company Ltd.,
66, Greams Road, Chennai-600 006. ... Appellant

Vs

1.N.Thenvelan

2.Arumuga Nayanar
(2nd respondent ex-parte before
the lower Court and hence notice
may be dispensed with). ... Respondents

C.M.A.No.2865 of 2005:

National Insurance Company Ltd.,
66, Greams Road, Chennai-600 006. ... Appellant

Vs

1.Tmt.Marthiammal

2.Arumuga Nayanar
(2nd respondent ex-parte before
the lower Court and hence notice
may be dispensed with). ... Respondents

C.M.A.No.2866 of 2005:

National Insurance Company Ltd.,
66, Greams Road, Chennai-600 006. ... Appellant

Vs

1.Tmt.Ilamalli

2.Arumuga Nayanar
(2nd respondent ex-parte before the lower Court and hence notice may be dispensed with). ... Respondents

C.M.A.No.2864 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.07.2004 made in MCOP No.4002 of 1997 on the file of the Motor Accidents Claims Tribunal, II Court, Small Causes, Chennai.

C.M.A.No.2865 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.07.2004 made in MCOP No.4003 of 1997 on the file of the Motor Accidents Claims Tribunal, II Court, Small Causes, Chennai.

C.M.A.No.2866 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.07.2004 made in MCOP No.4004 of 1997 on the file of the Motor Accidents Claims Tribunal, II Court, Small Causes, Chennai.

For Appellant in all appeals : Mr.N.Vijayaraghavan

For Respondents in all appeals : Mr.K.Varadha Kamaraj for R1 in CMA No.2864 and 2866 of 2005

Mr.S.Velmurugan for R1 in CMA No.2865 of 2005

COMMON JUDGMENT

The case in brief, is as follows:

On the fateful day, ie. on 20.06.1997, the first respondent in these appeals were travelling in a van bearing Reg.No.TN-09-A-7250 belonging to the second respondent in these appeals, and insured with the appellant Insurance Company. The van was proceeding from West to South direction in a rash and negligent manner, from Koyambedu to Parrys, Chennai. When the vehicle reached opposite to Door No.828 in PEVR Salai, the driver suddenly turned the van to the right side. Due to the said impact, the van hit the centre median and turned turtle. Due to the accident, the first respondent in these appeals along with others travelling in the van, sustained grievous injuries. The first respondents in these appeals filed claim petitions before the Tribunal. On considering the materials and evidence available on record, the Tribunal awarded a compensation of Rs.32,100/-, Rs.30,000/- and Rs.36,100/- respectively to the first respondent in these appeals, with interest at the rate of 9% per annum from the date of petitions.

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

3.The main ground put forth by the learned counsel for the appellant in these appeals, is that the Tribunal has failed to see that the original award dated 04.08.2000 was set aside by impersonating the insured, who chose to remain ex-parte yet again after the purpose was served in re-opening the awards on merits dated 04.08.2000, exonerating the insurer of the liability. It is also stated that the earlier awards were re-opened fraudulently and as such the claims deserve only to be dismissed.

4.The learned counsel for the first respondent / claimant in these appeals, has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded compensation to the injured; that the respective compensation granted to the injured are just, fair and reasonable. It is also submitted that the Tribunal has correctly ordered the Insurance Company to pay compensation to the injured and hence the judgment passed by the Tribunal does not require any interference in the hands of this Court.

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

6.When these appeals came up for admission before this Court on 20.09.2005, it was submitted on behalf of the Insurance Company that the injured herein are all fare paying passengers in the van; that the Tribunal initially upheld the defence of the Insurance Company and passed an award only against the owner of the vehicle and subsequently at the instance of the owner, the entire proceeding was re-opened and an award came to be passed against the Insurance Company. Considering the said submission, this Court granted an unconditional order of stay, until further orders.

7.At this juncture, it would be appropriate to refer to the judgment of this Court in United India Insurance Co. Ltd. v. Selvam and others, reported in 2005(2) TN MAC (DB) 345. The contention put forth on behalf of the Insurance Company in that case, was that gratuitous passengers in a goods vehicle are not entitled for compensation from the Insurance Company, since the policy did not cover use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number and that even the permit issued was only for carriage of goods. Relying upon the various decisions of the Hon'ble Supreme Court and this Court, this Court held that in view of amendment to 1988 Act by 1994 Amendment to S.147 and the laws laid by the Hon'ble Supreme Court, particularly the decision in National Insurance Co.Ltd. v. Baljit Kaur and others, reported in 2004 (2) SCC 1, the Insurance Company is not liable to pay compensation to the gratuitous passengers for whom no insurance premium paid. It has also been held that even though the position of law is in favour of the Insurance Company, that may have only prospective effect from the date of judgment of the Hon'ble Supreme Court, ie., 06.01.2004 and that for cases of erstwhile accidents, the position of law is that the Insurance Company shall have to pay and recover from the owner of the vehicle. It was also ordered that without filing any suit, even by way of filing an Execution Petition, the Insurance Company is entitled to recover the compensation from the owner.

8.The above judgment of this Court, squarely applies to the facts of the present case. In the present case, the accident occurred on 20.06.1997, much prior to the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Baljit Kaur and others (cited supra). ie., dated 06.01.2004. Hence, the appeals are partly allowed and the appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respective claimants in these appeals are permitted to withdraw the same, on making proper application before the Tribunal. The appellant Insurance Company, thereafter shall recover the award amounts from the owner of the vehicle simply by initiating proceedings before the Executing Court without filing separate suits. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal,
   II Court, Small Causes, Chennai.

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

+5ccs to Mr.N.Vijayaraghavan,Advocate,S.R.No.59296, 57082, 57080, 57081, 59293, 59292

+3cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.59093 TO 59095

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and C.M.P.Nos.14922 to 14924 of 2005

MG(CO)
CS/19/11/2019