IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3151 of 2006
and
CMP No.10182 of 2006

M/s United India Insurance Company Limited,
represented by its Branch Manager,
Tiruvannamalai. ... Appellant/Second Respondent

Vs.

1. Mrs. Mariammal

2. M/s Ideal Spinning Mills Limited,
No.4, Nehru Nagar, Salem-4.
... Respondents/Petitioner & 1st Respondent

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 31.12.2002 passed in M.C.O.P.No.73 of 1997 by the Additional Sub Judge/ Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant : Mrs.V.Renukadevi
for Mr.J.Raja Kalifulla

For Respondents : No appearance for R1 and R2

J U D G M E N T

The United India Insurance Company Limited, Tiruvannamalai, who is the 2nd respondent in MCOP No.73 of 1997 on the file of the Additional Subordinate Judge, Motor Accident Claims Tribunal, Tiruvannamalai has filed the present appeal.

2. The first respondent/claimant had filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 read with Section 3 of the Motor Accident Claims Tribunal, 1989 seeking compensation of Rs.1,00,000/- for the injuries sustained by her in a road accident that took place on 10.09.1995 at about

7.45 p.m. on Singarapettai-Salem Road.

3. The case of the first respondent/claimant is that on 10.09.1995, as per the direction of the 2nd respondent herein, she loaded certain articles in a lorry bearing registration No.TN-27-5533 belonging to the 2nd respondent and also traveled in the lorry along with goods. Her further contention is that the driver of the lorry bearing registration No.TN-27-5533 drove the lorry rashly and negligently near Mettupatti Thathanoor Gopalakrishna Polythene Company, as a result of which, the lorry hit a tamarind tree and toppled and the claimant sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the 2nd respondent was the cause of the accident and that since the owner of the vehicle/ 2nd respondent had insured the vehicle with the appellant insurance company, both of them are jointly and severally liable to pay compensation to her.

4. The Tribunal after analysing the evidence on record awarded a compensation of Rs.29,000/- to the claimant together with interest at the rate of 9% p.a. The Tribunal had also held that since the owner of the lorry had given his lorry to a marriage party on rental basis after receiving consideration, the claimant cannot be considered as a gratuitous passenger and therefore, the owner as well as the insurance company are jointly and severally liable to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited had filed the present appeal.

5. Mrs. V.Renukadevi, learned counsel appearing for the appellant contended that since the first respondent/claimant is only a gratuitous passenger, she cannot claim any compensation from the insurance company. She also relied on a decision of this court in The Branch Manager, M/s United India Insurance Company Limited, Dindigul Vs. Sarasu and others in CMA No.3857 of 2004 dated 09.10.2009 and contended that the insurance company is not liable to pay compensation in respect of injury caused to a gratuitous passenger travelling in a goods vehicle.

6. No representation on behalf of the 2nd respondent

7. In the above decision in The Branch Manager, M/s United India Insurance Company Limited, Dindigul Vs. Sarasu and others in CMA No.3857 of 2004 dated 09.10.2009, relied on by the learned counsel for the appellant, a Full Bench of this court's decision in Branch Manager, United India Insurance Co. Ltd. .. Vs. Nagammal and others reported in 2009(1) TN MAC 1 (FB) has

been extracted, which reads thus.

" 31. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:

(i) The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.

(ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously, it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstances envisaged and enumerated in Section 149(4) and Section 149 (5).

(iii) Under Section 147, the insurance company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of "pay and recover", as statutorily recognised in Section 149 (4) and Section 149(5), is not applicable ipso facto to such cases and therefore, ordinarily the court is not expected to issue such a direction to the insurance company to pay the claimant and thereafter recover from the owner..

Inview of the subsequent judgments, it is made clear that the insurance company is not liable to pay compensation in respect of death caused to a gratuitous passenger or person travelling in the goods vehicle. Taking into consideration the dictum laid down by the Hon'ble Supreme Court as well as the Full Bench of this court, I am of the view that the award passed by the Tribunal as against the insurance company is liable to be set aside."

8. As far as the present case is concerned, the Tribunal had come to a conclusion that the claimant as a member of the marriage party had travelled in the lorry as a gratuitous

passenger. She was also found to be sitting in the load area of the lorry. As per the decision of a Full Bench of this court, the award passed by the Tribunal against the appellant/ insurance company is liable to be set aside and since the claimant is a gratuitous passenger, she cannot claim compensation from the insurance company. Therefore, the insurance company is exonerated from its liability. However, the 2nd respondent, who is the owner of the lorry is liable to pay the entire compensation to the claimant with interest at 7.5% p.a. from the date of claim petition till the date of deposit.

9. In the result,

(i) The civil miscellaneous appeal is allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

(ii) The 2nd respondent/ owner of the lorry is directed to deposit the entire compensation of Rs. 29,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within 4 weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the 2nd respondent, the first respondent/claimant is at liberty to withdraw the entire amount after following necessary procedure.

(iv) M/s United India Insurance Company Limited namely the appellant is fully exonerated from paying the compensation amount to the first respondent/claimant and they are at liberty to withdraw the amount, if any deposited by them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

2. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.J.Raja Kalifulla, Advocate sr.76446

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br(co)
nr 04/03/2020