IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2518 of 2008
and M.P.No.1 of 2008

National Insurance Co., Ltd.,
No.403, Mettur Main Road
Bhavani - 403. ... Appellant /3rd Respondent

Vs

1.N.Dhanasekaran ...1st Respondent/Petitioner
2.Kolanthaivel ...2nd Respondent/ Ist Respondent
3.M.Palanisamy
4.R.Subramani
5.General Manager
Tamil Nadu Transport Corporation
Perundurai Depot, Perundurai. ...3rd to 5th Respondent/ 2nd 4th, 5th Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 10.05.2007 made in MCOP No.41 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court-IV), Bhavani.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.J.Franklin for R1
No appearance - R2 & R3

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.24,500/- towards compensation to the first respondent / claimant, due to the injuries suffered by him in a motor vehicle accident.

2.The case of the first respondent / claimant is that on 10.02.2003 while he was travelling in a mini-auto bearing registration No.TN36 E 7754, the bus belonging to the State Transport Corporation bearing registration No.TN33 N 1526 (appellant in CMA.No.628/2006) came in a rash and negligent manner and dashed against the mini-auto. As a result of the same, the claimant sustained grievous injuries. He filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/-. The Tribunal, after analysing the evidence both oral and documentary, has held that the accident was the result of contributory negligence on the part of the drivers of both the vehicles and awarded a sum of Rs. 24,500/- as compensation to the claimant. Aggrieved over the same, the Insurance Company has come forward with the present appeal.

3.When this appeal was taken up, the learned counsel for the appellant Insurance Company has produced a copy of the judgment of this Court dated 05.10.2010 in CMA No.1631 of 2006, relating to the claims arising out of the same accident which occurred on 10.02.2003. The relevant portion of the aforesaid judgment is extracted hereunder:

> “Learned counsel for the appellant Insurance Company submitted that before the Tribunal, the owner of the auto had violated the policy conditions by carrying more than five persons in addition to the driver at the time of the accident. Hence, the appellant insurance company cannot be held liable to pay the compensation. In support of his contention, the learned counsel for the insurance company relied on the decisions reported in the case of THE BRANCH MANAGER, UNITED INDIA INSURANCE CO.LTD., PALANI ..vs.. CHINNATHAMBI AND ANOTHER (2010-3-L.W.266).
>
> I find that at the time of accident, the injured claimant had travelled in the auto as an unauthorised passenger and under such circumstance, the insurance company cannot be made liable to pay the compensation. In this regard, a reference could be made in the judgment relied on by the appellant insurance company in 2010-3-L.W.266 (supra), wherein it has been held as follows:
>
> > "13. The learned counsel appearing for the appellant/second respondent (in the main petition) has advanced his argument mainly on the basis of Rule 238 of the Tamil Nadu Motor Vehicles Rules, 1989 and the same reads as follows: "Prohibition of persons on the top of goods carriage:- No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person

> is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such a manner that any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests.
>
> 14. From the close reading of the provision of the said Rule, it is needless to say that no person shall be permitted to travel upon goods. In the instant case, as per the First Information Report given by the applicant/first respondent herein, it is very clear that at the time of accident, the applicant and others have travelled on the backside of the lorry and that too on the sand, loaded in the lorry. Since the applicant and other persons have travelled as stated above, it is very clear that the second respondent herein (owner of the lorry) has clearly violated the conditions of policy".

A reading of the above judgment would show that the insurance company cannot be made liable to pay the compensation for the death of a person, who had travelled as an unauthorised passenger. Under such circumstances, I am of the view that the liability fixed on the part of the insurance company is liable to be set aside. Accordingly, C.M.A.No.1631 of 2006 is allowed and the finding of the Tribunal with regard to the liability fixed on the part of the insurance company is set aside. No costs. However, Respondents 1 to 4/the claimants can work out their remedy as against the 8th respondent, the owner of the mini auto, in accordance with law, in recovering the compensation amount."

4.The learned counsel for the appellant Insurance Company, relying upon the said judgment of this Court, submitted that this Court has passed the said judgment directing the claimants therein to recover the compensation from the owner of the vehicle by initiating appropriate proceedings, taking note of the submission of the learned counsel for the appellant Insurance Company therein that the Tribunal has erred in fastening the liability upon the Insurance Company in view of the fact that the claimants had travelled as gratuitous passengers in the goods carrying vehicle, after considering the materials and evidence available on record and also relying upon the relevant case laws. The said submission has been fairly conceded by the learned counsel for the first respondent/claimant.

5.This Court has perused the judgment passed by this Court dated 05.10.2010 in CMA Nos.1631 of 2006, relating to the claims arising out of the same accident which occurred on 10.02.2003. After considering the matter in detail, this Court has passed the judgment holding that only the owner of the vehicle can be held liable to pay the award amount and accordingly, set aside the award of the Tribunal.

6.Following the aforesaid Judgment of this Court, the present Civil Miscellaneous Appeal is allowed and the finding of the Tribunal with regard to the liability fixed on the part of the Insurance Company is set aside. However, the claimant can work out his remedy as against the 3rd respondent, the owner of the mini auto, in accordance with law, in recovering the compensation amount. The amount, if any deposited by the Insurance Company, shall be permitted to be withdrawn by the appellant. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

KST

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge (Fast Track Court-IV),
Bhavani.

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

+1 cc to Mr.S.Arunkumar Advocate sr73333

C.M.A.No.2518 of 2008

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