IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.01.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.4202 of 2005

United India Insurance Co. Ltd.,
Namakkal.
...Appellant/2nd Respondent
..Vs..

1.Mr.Selvaraj ... 1st Respondent/Petitioner
2.Mr.P.Palanisamy
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree in M.C.O.P.No.42 of 2004 dated 04.04.2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, FTC -III, Namakkal.

For Appellant : Mr.S.Arun kumar
For Respondents : No Appearance

JUDGMENT

The appellant is the United India Insurance Company Limited, Namakkal and they filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 questioning their liability to pay compensation amount to the first respondent/claimant.

2.The first respondent/claimant filed a claim petition in M.C.O.P.No. 42 of 2004 before the Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court -III, Namakkal under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 16.03.2003.

3.The brief facts of the first respondent/claimant are as follows:

On 16.03.2003, at about 08.50 pm, the first respondent/claimant was travelling as a load man in a tractor-trailer bearing Registration No. TN 28 T 2865 on Namakkal - Salem main road. The driver of the tractor-trailer drove the vehicle rashly and negligently and hit a bus bearing Registration No. TN 58 N 372, as a result of which, the first respondent/claimant sustained injuries.

4.According to the first respondent/claimant, the rash and negligent driving of the driver of the tractor-trailer bearing Registration No. TN 28 T 2865 was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

5.The learned Additional District Judge, Fast Track Court -III, Namakkal after analysing the evidence on record has held that the injured was travelling in the tractor-trailer as a labourer and that the Insurance Company is liable to pay compensation of Rs.25,000/- together with interest at the rate of 9% per annum to the first respondent/claimant.

6.Aggrieved over the orders passed by the tribunal, the United India Insurance Company Limited has filed the present appeal contending that since the injured was a gratuitous passenger, the Insurance Company is not liable to pay any compensation to him.

7. Mr.S.Arun kumar, learned counsel for the appellant relied on the decision in C.Pinniammal Vs.Jakkammal and others reported in CDJ 2017 MHC 8075 and contended that since the first respondent/claimant was sitting on the load area, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation to him.

8. In the decision in 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."

9. 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".

10. 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.

11. In the instant case, the injured was admittedly sitting on the load area and definitely, he will not be covered under the policy even though the goods loaded in the tractor belonged to him. The owner of the goods is permitted to travel in the goods vehicle, but he cannot be permitted to travel in the load area of the goods vehicle. He can travel only in the area earmarked for sitting.

12.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.
>
> 49.....
>
> 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.

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 order passed by the tribunal directing the Insurance company to pay the award amount to the claimant is liable to be set aside.

13.At this juncture, it is relevant to point out that the claimant did not file any cross objection or appeal against the quantum of compensation and in the facts and circumstances of the present case, the quantum of compensation awarded by the tribunal is upheld.

14. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The second respondent/owner of the tractor-trailer is directed to deposit the entire compensation awarded by the tribunal to the credit of M.C.O.P.No.42 of 2004, dated 04.04.2005, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court -III, Namakkal within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent/owner of the tractor-trailer, the claimant is entitled to withdraw the same after following due procedure of law.

(v) The appellant/Insurance Company is exonerated from paying the compensation amount and they are also at liberty to withdraw the compensation amount, if already deposited by them.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court -III,
Namakkal.

+1cc to Mr.S.Arun kumar, Advocate sr.4780

C.M.A.No.4202 of 2005

gp(co)
nr 10/10/2019