IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.07.2019
CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.920 and 3992 of 2005
and 13 of 2008
& M.P.Nos. 5080 and 4632 of 2005

C.M.A.No.920 of 2005

The Branch Manager,
M/s.United India Insurance Company Ltd.,
Dindigul, Dindigul District.
... Appellant/2nd respondent

..vs..

1. U.Radhakrishnan ...1st Respondent/ Petitioner
2.M/s.Ramamoorthy Lorry Service
No.42,42,Begampur,
Dindigul ..2nd respondent/1st Respondent

C.M.A.No.3992 of 2005

The Branch Manager,
M/s.United India Insurance Company Ltd.,
Dindigul, Dindigul District.
... Appellant/2nd respondent

..vs..

1. Venkatesan ..1st respondent/ Petitioner
2.M/s.Ramamoorthy Lorry Service
No.42,42,Begampur,
Dindigul ..2nd respondent/1st Respondent

C.M.A.No.13 of 2008

The Branch Manager,
M/s.United India Insurance Company Ltd.,
Dindigul, Dindigul District.
... Appellant/2nd Respondent

..vs..

1. Ruthirakotti ..1st Respondent/ Petitioner
2.M/s.Ramamoorthy Lorry Service
No.42,42,Begampur,
Dindigul ..2nd respondent/1st Respondent

Prayer in C.M.A.No.920 of 2005: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment in M.A.C.T.O.P.No.176 of 2002 dated 12.03.2003 on the file of the Fast Track Court No.II, (M.A.C.T.O.P.No.1160 of 1996 on the file of Motor Accidents Claims Tribunal (Sub Court), Tindivanam.

Prayer in C.M.A.No.3992 of 2005: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment in M.A.C.T.O.P.No.177 of 2002 dated 12.03.2003 on the file of the Fast Track Court No.II, (M.A.C.T.O.P.No.1162 of 1996 on the file of Motor Accidents Claims Tribunal (Sub Court), Tindivanam.

Prayer in C.M.A.No.13 of 2008: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment in M.A.C.T.O.P.No.179 of 2002 dated 12.03.2003 on the file of the Fast Track Court No.II, (M.A.C.T.O.P.No.1161 of 1996 on the file of Motor Accidents Claims Tribunal (Sub Court), Tindivanam.

For Appellant : Mr. J.Raja Kalifulla
(in all cases)

For R1 : Mr.S.Kaithamalai Kumaran
(in C.M.A.No.920 of 2005)
: Mr.A.K.Kumarasamy
(in C.M.A.No.3992 of 2005)
: Mr.Magesh
(in C.M.A.No.13 of 2008)

R2: No Appearance in all CMAs

C O M M O N J U D G M E N T

These appeals are filed by the Insurance Company, challenging the common award, dated 12.03.2003 passed by the Motor Accident Claims Tribunal, (Sub Judge, (Fast Track Court No.II), Tindivanam) in M.C.O.P.Nos. 176, 177 and 179 of 2002 respectively.

2. The only point raised by the learned counsel for the appellant in all these Appeals is that the injured were gratuitous passengers in the lorry bearing Regn.No.TN-57-A-1177 owned by the second respondent herein. Hence, the first respondent(s) herein/claimant(s) were not entitled to claim any compensation against the appellant / insurance company, since the the second respondent herein had violated the

conditions of the permit and the insurance policy. The learned counsel for the appellant further contended that in order to prove the defence taken by the appellant insurance company, they have examined one Devarajan, Investigator as R.W.1 and marked Exs.R-1 to R-3. In spite of the evidence adduced by the insurance company, the Tribunal relying on the judgment of the Supreme Court in New India Assurance Company v. Satpal Singh and others [2000 ACJ 1 (SC)] has come to the conclusion that the insurance company as well as the owner of the vehicle were liable to pay compensation. But, the Hon'ble Supreme Court in the subsequent decision rendered in New India Assurance Co.Ltd., vs. Asha Rani and Others [2004 (2) TN MAC 387 (SC)] held that the insurance company will not be liable for paying compensation in respect of the liability arising on account of the death of a passenger traveling in a goods vehicle as gratuitous passenger.

3. The learned Counsel for the appellant also drew the attention of this Court to the Full Bench decision of this Court in 2009(1) TN MAC 1 (FB) Branch Manager, United India Insurance Co.Ltd., ... Vs.. Nagammal & Others, wherein it is held as follows:

> " 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 recognized in Section 149(4) and

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......."

Hence, the learned counsel prayed to set aside the impugned award as against the appellant/insurance company with respect to the liability fixed on them to pay compensation.

4. Taking into consideration the dictum laid down by the Hon'ble Supreme Court in the subsequent decision as well as the Full Bench of this Court to the effect that the insurance company is not liable to pay compensation in respect of death caused to gratuitous passenger or person travelling in the goods vehicle, this Court is of the view that the award passed by the Tribunal as against the Insurance Company is liable to be set aside.

5. Accordingly, the common award passed by the Tribunal as against the appellant / insurance company is set aside and the Insurance company is exonerated from its liability. Hence, the first respondent(s), who are the claimants before the Tribunal, can work out their remedy as against the second respondent, who is the owner of the vehicle, to recover the award amounts. All the Civil Miscellaneous Appeals are disposed of accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk / vv

To

1. Fast Track Court No.II, Motor Accidents Claims Tribunal (Sub Court), Tindivanam.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

+2ccs to Mr.J.Raja Kalifulla , Advocate SR.No. 54822,54823

C.M.A.Nos.920 and 3992 of 2005
and 13 of 2008
&
MP.Nos.5080 and 4632 of 2005

A.SK(05/03/2020)