IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.01.2019
CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.329 of 2008 and
M.P.No.1 of 2008

United India Insurance Company Limited,
Mayiladuthurai Town
...Appellant/2nd Respondent

..Vs..

1.Chinna Pillai ..1st Respondent/ Petitioner
2.M.Panneerselvam
...2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment in M.C.O.P.No.8 of 2005, dated 30.11.2006, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.M.Rajendran
Legal Aid Counsel

JUDGMENT

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

2. The first respondent/claimant filed a claim petition in MCOP No. 8 of 2005, on the file of the Principal Sub Court, Mayiladuthurai under Section 166 of the Motor Vehicles Act seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 20.02.2003.

3. The brief facts of the claimants are as follows.

On 20.02.2003, after loading hay stocks, the first respondent/ claimant along with four others were travelling in a tractor-trailer bearing Registration No. TN 51 Y 0443 belonging to the second respondent on Nagangudi - Mayiladuthurai Road and the first respondent/claimant was sitting on the tow bar. The driver of the tractor - trailer drove the vehicle rashly and negligently, as a result of which, the first respondent/claimant was thrown away from the tractor-trailer and sustained injuries.

4. According to the first respondent/claimant, the rash and negligent driving of the driver of the second respondent was the cause of the accident and that since the tractor - trailer was insured with the present appellant/ Insurance Company, both of them are jointly and severally liable to pay compensation to the him.

5. The learned Principal Subordinate Judge, Mayiladuthurai, after analysing the evidence on record has held that the insurance company is liable to pay compensation of Rs.92,670/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the first respondent/claimant.

6. Aggrieved over the order 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.T.Ravichandran, 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 tow bar, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation to him.

8. 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.In the instant case, the injured was not sitting within the permitted seating capacity and therefore, the Insurance Company cannot be held to be liable to pay compensation to the claimant.

10. 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".

11. In the instant case, the injured was admittedly sitting on the tow bar 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 or tow bar of the goods vehicle. He can travel only in the area earmarked for sitting. Infact, in the tractor-trailer, there is seating capacity except the driver of the tractor.

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 judgments 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.

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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 claimants and then to recover the same from the owner of the vehicle is liable to be set aside.

13. In the result,

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

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

(iii) The order of the tribunal directing the Insurance Company to pay the quantum is alone set aside.

(iv) The second respondent/owner of the tractor-trailer is directed to deposit the entire compensation of Rs.92670/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs to the credit of M.C.O.P.No.8 of 2005, dated 30.11.2006, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent/owner of the tractor-trailer, the first respondent/claimant is at liberty to withdraw the same, after following due process of law.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Principal Sub Court,
Mayiladuthurai.

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

+1cc to Mr.T.Ravichandran,Advocate SR.No. 3757

C.M.A.No.329 of 2008 and
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A.SK(19/06/2019)