IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.4196 of 2008 and
M.P.1 of 2008

The Divisional Manager,
The New India Assurance Company Ltd.,
Vellore.
... Appellant/(2nd Respondent)

..Vs..

1. Chandrasekar .. 1st Respondent(Claimant)

2. Meenakshi Ammal Polytechnic,
Meenakshi Ammal Trust,
No.641, Ramasamy Road,
K.K.Nagar,
Chennai.
...2nd Respondent/(1st Respondent)

PRAYER:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment of the Motor Accidents Claims Tribunal [Sub-Judge], Cheyyar in M.C.O.P.No.32 of 2004 dated 27.08.2008.

For Appellant : Mr.K.Padmanabhan

For Respondents : No appearance for R1 and R2

JUDGMENT

The New India Assurance Company Limited, the second respondent in M.C.O.P.No.32 of 2004 on the file of the Motor Accidents Claims Tribunal, Cheyyar, Thiruvannamalai district has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

2.The first respondent/claimant filed a claim petition in M.C.O.P.No.32 of 2004 under Section 166 of the Motor Vehicles

Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a accident that took place on 18.07.2003, when he was travelling in a lorry bearing Registration No. TN 09 U 4537 belonging to the second respondent as a passenger.

3.According to the first respondent/claimant, the driver of the lorry drove the vehicle rashly and negligently, as a result of which, the lorry toppled and he sustained grievous injuries in the accident. It is further contended that since the lorry bearing Registration No. TN 09 U 4537 belonging to the second respondent was insured with the present appellant, the owner of the lorry/second respondent as well as the insurer namely the New India Assurance company Limited are jointly and severally liable to pay compensation to him.

4.The owner of the lorry did not appear before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition by filing a counter. The tribunal after analysing the evidence on record, awarded compensation of Rs.64,000/- together with interest at the rate of 7.5% per annum and directed the present appellant and the second respondent herein to pay the compensation jointly and severally to the first respondent/ claimant. Aggrieved over the orders passed by the tribunal, the New India Assurance Company Limited has filed the present appeal.

5.Mr.K.Padmanabhan, learned counsel appearing for the appellant contended that the first respondent/claimant was a gratuitous passenger in the lorry and therefore, the Insurance Company is not liable to pay any compensation to the first respondent/claimant. He also relied on the following decision in (i) Oriental Insurance Company Limited vs. R. Siva and others reported in 2013 (1) TN MAC 198, (ii) Bharati AXA General Insurance Company Limited, rep. by it Manager, 1st floor, Fems Icon, Survey No. 28, Doddannakundi, K.R.Puram Obli, Bangalore - 560 037 vs. Anandi and others in C.M.A.Nos.1529 to 1533 of 2015, dated 24.10.2018, and contended that the tribunal was not right in directing the Insurance Company to pay the compensation to the first respondent/claimant. He also drew the attention of this Court to the claim petition in M.C.O.P.No.32 of 2004, wherein, there is no avernment that the injured was travelling in the offending vehicle either as owner or as authorised representative of the goods and all that the first respondent/claimant stated was that he was travelling in the lorry and was proceeding towards his house after completing his job as a coolie. It is true that nothing was stated in the claim petition that the first respondent/claimant was taking his goods in the said vehicle or travelling as owner of the goods.

6.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 public place. Infact, 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.

7.The 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.

8.In the instant case, the first respondent/claimant was admittedly a gratuitous passenger and therefore, he would not be covered under the policy. In the decision in Bharati AXA General Insurance Company Limited, rep. by it Manager, 1st floor, Fems Icon, Survey No. 28, Doddannakundi, K.R.Puram Obli, Bangalore - 560 037 vs. Anandi and others in C.M.A.Nos.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 that

> "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."

9.Therefore, the orders passed by the tribunal directing the Insurance Company to pay compensation amount to the first respondent/claimant is liable to be set aside.

10.As regards the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant. Infact, no cross objections or appeal is filed by the first respondent/claimant and therefore the quantum of compensation awarded by the tribunal is upheld.

11.In the result

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The orders passed by the tribunal directing the Insurance Company to pay the compensation amount to the first respondent/ claimant is set aside.

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

(iv) The owner of the lorry bearing Registration No. TN 09 U 4537 is directed to deposit the entire compensation amount of Rs.64,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.32 of 2004, dated 27.08.2008, on the file of the Motor Accidents Claims Tribunal [Sub-Judge], Cheyyar within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the first respondent/ claimant is at liberty to withdraw the same after following due procedure of law.

(vi) The Insurance Company is at liberty to withdraw the entire compensation amount already deposited by them.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Cheyyar.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.K.Padmanabhan, Advocate, S.R.No.599

C.M.A.No.4196 of 2008 and
M.P.1 of 2008

SV(CO)
CS/27/03/2019