IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.656 of 2009
and
M.P.No.1 of 2009

National Insurance Company Limited,
Branch Office, 66, Perundurai Road,
Erode, 636 011. ... Appellant/3rd Respondent

Vs.

1. Kuppusamy ...1st Respondent/Petitioner
2. Annadurai
3. Chokkappan ...2&3Respondents/1&2 Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 22.09.2008 passed in MCOP.No.10 of 2006 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Bhavani.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.C.Kulanthaivel (for R1)
No appearance for R2 and R3

J U D G M E N T

The National Insurance Company Limited, Erode, the 3rd respondent in MCOP No.10 of 2006 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Bhavani has filed the present appeal questioning their liability to pay compensation to the claimant.

2. The first respondent/claimant filed the above said claim petition 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 04.01.2005.

3. The case of the first respondent/claimant is that he loaded bricks in a tractor bearing Registration No.TN-36-D-3982 for constructing a compound wall in Palaniyappa Marriage Hall at Bhavani and also travelled in the Tractor with the bricks. He reached Palaniyappa Marriage Hall at 3.30 p.m. When he attempted to alight the Tractor, the driver of the Tractor took the Tractor all of a sudden, as a result of which, he sustained injuries all over his body and was immediately rushed to Dr.Loganathan Hospital at Bhavani. According to the

claimant, the rash and negligent driving of the driver of the Tractor was the cause of accident and that since the owner of the Tractor, the 3rd respondent insured his vehicle with the National Insurance Company Limited, Erode (the appellant), both of them are jointly and severally liable to pay compensation to him.

4. The driver and the owner of the tractor remained absent before the Tribunal and therefore, they were set exparte. The appellant, National Insurance Company Limited contested the claim petition.

5. The learned Subordinate Judge/Motor Accident Claims Tribunal, Bhavani while awarding a compensation of Rs.93,500/- together with interest at the rate of 6% per annum to the claimant, also held that the insurance company should pay the compensation amount to the claimant in the first instance and then recover the same from the owner of the tractor, since the claimant travelled in the tractor as a gratuitous passenger and violated the insurance policy condition. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited, Erode has filed the present appeal.

6. Mr.D.Baskaran, learned counsel appearing for the appellant contended that as per Section 147 of the Motor Vehicles Act, the Insurance Company would not statutorily required to cover the liability in respect of a passenger of a goods vehicle and therefore, the orders passed by the Tribunal directing the insurance company to pay the compensation amount to the claimant in the first instance is totally wrong. He also relied on the decision in United India Insurance Company Limited Vs. Nagammal and others reported in 2009(1) CTC 1 and contended that a passenger in a tractor cannot claim any compensation from the insurance company.

7. Per contra, Mr.C.Kulanthaivel, learned counsel appearing for the first respondent/ claimant contended that since the accident took place only after the claimant alighted the tractor, the claimant should be considered only as a third party. He also relied on the decision in Shivaraj Vs. Rajendra and another reported in 2019(2) TN MAC 273 (SC) and contended that even assuming that the claimant travelled in the tractor as a passenger in breach of policy condition, the insurer should be directed to pay compensation amount to the claimant in the first instance and then recover the same from the owner of the vehicle.

8. In the claim petition, the claimant has mentioned that while he attempted to alight the tractor, the driver of the tractor took the vehicle, as a result of which, he fell down and sustained injuries. Therefore, it is clear that at the time of accident, the claimant was a passenger in the tractor. The seating capacity in the tractor is only one, which is intended for the driver.

9. 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."

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. 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.

12. In the instant case, the claimant was admittedly sitting on the bricks in the tractor (load area) and definitely, he will not be covered under the policy. 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.

> 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 is liable to be set aside, in so far as the liability of the appellant /Insurance company is concerned. The Tribunal awarded interest at the rate of 6% per annum and the same is enhanced to at 7.5% per annum.

13. In the result,

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

(ii) The compensation amount of Rs.93,500/-, together with interest at the rate of 7.5% per annum shall be paid by the owner of the tractor.

(iii) The appellant/Insurance Company is exonerated from paying compensation amount to the claimant and is entitled to withdraw the amount, if already deposited by them.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Bhavani.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+1 cc to Mr.C.Kulanthaivel, Advocate,sr.83074

+1 cc to Mr.C.Bhaskaran, Advocate,sr.83015.

pvs(co)
krd 24/9

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M.P.No. 1 of 2009