IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.04.2019

Delivered on : 26.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1270 of 2012
and
MP.No.1 of 2012

The New India Assurance Co. Ltd.,
Branch Office, DB Road, 435,
R.S.Puram, Coimbatore. ... Appellant/3rd respondent

Versus

1.Chandra
2.Durairaj
3.Kavitha
4.S.Satheeskumar
5.Sampooranam ... Respondents

[R3 is given up and R4/driver remained ex-parte and notice is dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.07.2011 made in M.C.O.P.No.193 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.D.Balachandran (for R1 & R2)
: Given up - R3
: Ex-parte - R4
: No Appearance - R5

J U D G M E N T

The Insurance company is the appellant herein. The award dated 08.07.2011 passed in MCOP.No.193 of 2010, which was subsequently modified by judgment dated 14.07.2011 made in I.A.No.874 of 2011, which is a review application, is challenged by the insurance company on the ground of liability and compensation.

2.The respondents 1 to 3 herein, who are the legal representatives of the deceased Vadivel, have preferred MCOP.No.193 of 2010 alleging that on 21.01.2009, at about 10.00 am, when the deceased was travelling in a mini auto bearing Reg.No.TN-33-AL-2785, which was driven by the 1st respondent in a rash and negligent manner, without having balance and control, hit against a tree on the right side of the road. As a result of which, the accident had occurred and he died. The respondents 1 and 2 (before the Tribunal) are the driver and the owner of the vehicle, which was insured with the appellant/insurance company. Therefore, the claimants claimed a sum of Rs.9,45,000/- as compensation in the claim petition.

3.Before the Tribunal, the owner and the driver of the vehicle have remained ex-parte.

4.The Insurance company filed a counter statement alleging that the deceased travelled in the vehicle as an unauthorized passenger, it amounts to violation of terms and conditions of the policy and, hence they are not liable to pay any compensation to the victims.

5.In order to substantiate the claim petition, before the Tribunal, on the claimants side, PW.1 & PW.2 were examined and Exs.P1 to P7 were marked. On the respondents side, RW.1 was examined and Ex.R1 was marked.

6.After going through the records, it is seen that in this case a judgment was passed on 08.07.2011 in MCOP.No.193 of 2010. The Counsel for the insurance company had taken out an application in I.A.No.874 of 2011 for reviewing the said judgment and the claimants have not raised any objection to review the said judgment, accordingly the said I.A.No.874 of 2011 was allowed.

7.On consideration of both the oral and documentary evidence, the Tribunal held that the accident had taken place due to the rash and negligent manner of driving of the driver of the Mini Auto (Tata Ace) bearing registration No.TN-33-AL-2785 and also held that as on the date of the accident, the deceased was aged 24 years, his notional income was fixed at 4,500/- and adopted the multiplier '17'. After the deduction of 1/3rd towards personal expenses, a sum of Rs.6,21,500/- was awarded to the claimants 1 and 2. It was held that the 3rd claimant, who is the sister of the deceased, is not entitled to have any compensation. Accordingly, the sum of Rs.6,21,500/- was only awarded for the parents of the deceased.

8.Though the Tribunal accepted the contentions of the insurance company and their policy conditions and held that the insurance company is not liable to pay, however, the Tribunal ordered and directed the insurance company to pay the compensation to the victims and then recover from the owner of the vehicle. Aggrieved by the said judgment, the insurance company has preferred this appeal.

9.I have heard the learned counsel on both sides and perused the materials available on record.

10.It is seen that after going through the records and the evidence, the Tribunal passed an order on 08.07.2011 in

MCOP.No.193 of 2010, which was disposed of. It appears that the learned counsel for the insurance company filed an application in I.A.No.874 of 2011 to review the above said judgment and the learned counsel for the claimants raised no objection. The said I.A.No.874 of 2011 was allowed and MCOP.No.193 of 2010 was again taken up of hearing, wherein the above said judgment seems to have been passed. In other words, the insurance company was held not liable to pay the compensation, however in the operative portion of the judgment, the insurance company was directed to pay the amount and then recover the same from the owner of the vehicle.

11.After perusing the records of the Court below, it is seen that in the earlier order dated 08.07.2011 passed by the very same Judicial Officer in the main MCOP.No.193 of 2010 in the paragraph No.14 the Tribunal, at the first instance has held that as per Ex.R1/policy copy the vehicle is under package policy and the nature of the vehicle was not disclosed in the Ex.R1, the insurance company is liable to pay compensation. However, after the review, in the review order, the second portion of that order in the paragraph No.14 was totally deleted and the insurance company was held to be not liable. Hence, the Court has called for the award passed on 08.07.2011 in MCOP.No.874 of 2011 and review order in I.A.No.874 of 2011 passed on 14.07.2011.

12.It is seen from the evidence of RW.1 and Ex.R1/Policy copy that as on the date of the accident, the policy was in force and the premium has been paid only towards own damage and third party coverage. The schedule of premium is as extracted hereunder:-

Schedule of Premium			
Own Damage		Liability	
			Basic TP Cover
			Compulsor PA Cover for Owner Driver, LL to persons employed for opn and/or maint. and/or loading and/or unloading, LL to persons employed for opn and/or maint.and/or loading and/or unloading
OD Premium in Rs	4391	TP Premium in Rs	5730

13.Accordingly, this Court is of the considered view that Ex.R1/policy copy is the third party policy coverage and it is also seen from the evidence of RW.1 and evidence of PW.1 & 2, that the deceased Vadivel had travelled as an unauthorized passenger in the said vehicle bearing registration No.TN-33-AL-2785.

14.On a perusal of Ex.R1/Policy copy, the offending vehicle is a goods carrying vehicle and from the evidence adduced before the Tribunal, the deceased had travelled in the said vehicle along with the goods. A Division Bench of this Court in C.M.A.Nos.1529 to 1533 of 2015 in the case of Bharati AXA General Insurance Co. Ltd., Vs. Aandi and another, held that when all the persons viz., the deceased as well as the injured claimants, were unauthorized passengers in the goods vehicle, the Insurance Company cannot be made liable to pay the compensation.

15.In this case, the deceased travelled as an unauthorized passenger in the said vehicle, hence, the insurance company is not liable to pay compensation. In view of the decision of the Division Bench cited supra, the pay and recovery order passed by the Tribunal is unsustainable and accordingly, the pay and recover clause incorporated in the said judgment is without any reasoning and hereby stands vacated and the insurance company is not liable to pay the compensation.

16.Consequently, it is held that the owner of the vehicle alone is liable to pay the compensation to claimants 1 and 2 as awarded by the Tribunal. Hence, the Civil Miscellaneous Appeal filed by the insurance company is allowed.

17.In the result,

(i) this Civil Miscellaneous Appeal is allowed.

(ii) the fifth respondent herein/owner of the vehicle is directed to pay the compensation amount of Rs.6,21,500/- as awarded by the Tribunal and to deposit the same, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) on such deposit, claimants 1 and 2 are entitled to withdraw the same, by making necessary application before the Tribunal.

(v) the appellant/Insurance company is permitted to withdraw the compensation amount, if any, deposited to the credit of the above said MCOP.No.193 of 2010, as per the direction given by the Tribunal along with interest and costs.

(vi) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Bhavani.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 72641
+1cc to Mr.D.Balachandran, Advocate, S.R.No. 72550

SPD(CO)
GN(13/02/2020)