IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON 04.01.2019

DELIVERED ON 18.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.Nos.1750 to 1753 of 2012

Sekar @ Chandrasekaran ... Appellant/Petitioner in CMA No.1750 of 2012

Kulandaivel ... Appellant/Petitioner in CMA No.1751 of 2012

Sadayan ... Appellant/Petitioner in CMA No.1752 of 2012

Raju ... Appellant/Petitioner in CMA No.1753 of 2012

Vs.

1. Velmurugan
2. Mani
3. The New India Assurance Company Limited, Namakkal

... Respondents/Respondents in CMA No.1750 to 1753 of 2012

PRAYER in CMA Nos.1750 of 2012 to 1753 of 2012:

These Civil Miscellaneous Appeals, CMA No.1750 / 2012, 1751 / 2012, 1752/2012 and 1753 / 2012 have been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed in M.C.O.P.No.27 / 2008, 28/ 2008, 48 / 2008 and 49 / 2008 by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Attur on 28.09.2011.

In all CMAs

For Appellant : Mr.K.Varadhakamaraj

For 2nd Respondent : Mr.R.Jayaprakash

For 3rd Respondent : Mr.J.Chandran

For first Respondent: No appearance

COMMON JUDGMENT

The appellants are the claimants in MCOP Nos.27 / 2008, 28 / 2008, 48 / 2008 and 49 / 2008 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Attur. They filed the above said claim petitions under Section 166 of the Motor vehicles Act, 1988 and Rule 3 of the Motor Accident Claims Tribunal Rules seeking compensation from the respondents 1 to 3 for the injuries sustained by them in a road accident that took place on 03.12.2007.

2. The brief case of the claimants is as follows: On 03.12.2007, all the claimants were travelling in a lorry bearing registration No. TN-28-F-4565 on Keeraganur Thalaivasal main road, Thanjavur after loading tapioca in the lorry. When the lorry was nearing a bridge, the driver of the lorry drove the lorry rashly and negligently, as a result of which, the lorry toppled and the claimants sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver (first respondent) of the lorry bearing registration No. TN-28-F-4565, belonging to the 2nd respondent was the cause of the accident and that since the said lorry was insured with the 3rd respondent, the New India Assurance Company Limited, Namakkal, all of them are jointly and severally liable to pay compensation to the claimants.

3. The owner of the lorry (2nd respondent) remained absent before the tribunal and therefore, he was set exparte. The other respondents contested the claim petitions.

4. After analysing the evidence on record, the tribunal awarded a compensation of Rs.1,04,920, Rs.80,400/-, Rs.51,800/- and Rs.77,000/- respectively in MCOP No.27, 28, 48 and 49 of 2008.

5. The tribunal while awarding compensation to the claimants held that the Insurance Company, the 3rd respondent is not liable to pay any compensation to the claimants, since the claimants travelled in a goods lorry as gratuitous passengers. However, the tribunal held that the driver of the lorry was rash and negligent in driving the lorry bearing registration No. TN-28-F-4565 .

6. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants contended that

i] After the amendment to Section 147 by Act 54 of 1994 w.e.f. 14.11.1994, the insurer is required to pay compensation in respect of death or bodily injury to the owner of goods or his authorised representatives carried in a goods vehicle.

ii] The insurance company is liable to pay compensation for the labourers travelling in a goods vehicle for loading / unloading goods, if they sustained bodily injuries/death on account of motor accidents. In support of his contentions, he placed reliance upon the following decisions.

a) Divisional Manager, United India Insurance Company Limited, Nagercoil V. 1. C.Ramesh s/o Chinnakkannu, 2. D.Chandran reported in 2005(2) TN MAC (DB) 116

b) United India Insurance Company Limited V. Muni Anjinappa and others reported in 2018 ACJ 2081

c) Shivawwa and another V. Branch Manager, National Insurance company Limited and another reported in 2018 ACJ 1288

According to him, the insurer should cover compulsorily all the risks arising out of the use of the motor vehicle and as per Section 147(1)(b) of Motor Vehicles Act, 1988, coolies being employees carried in a goods vehicle are also compulsorily covered under the Insurance policy. It is his further contention that any other view will expose innocent third parties to go without any compensation when they suffer injury on account of such motor accidents.

7. Per contra, Mr.J.Chandran, learned counsel appearing for the 3rd respondent/ Insurance Company contended that even as per the first information report, the claimants were travelling in the lorry as gratuitous passengers and therefore, the insurance company is not liable to pay any compensation to the claimants. Reliance was placed upon the decision of the Division Bench of this court in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018 in which it is 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.

8. At this juncture, it is relevant to extract the following Motor Vehicles Rules:

Rule 236: Limit of persons in goods carriage. - No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimetres measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage.

Rule 238. Prohibition of persons on the top of goods carriage. - No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such a manner that in any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests.

Rule 240. No person to be carried for hire or reward. - Nothing contained in Rules 236, 238 and 239 shall be deemed to authorise the carriage of any person for hire or reward on any goods carriage.

9. In the decision in National Insurance Company Limited Vs. Anjana Shyam reported in (2007) 7 SCC 445, It has been held thus.

> Section 149 of the Motor Vehicles Act, 988 speaks of the judgment or award in respect of the liability as is required to be covered by a policy under clause (b) of sub-section(1) of Section 147 of the Act having to be satisfied. Section 147(1)(b) compels insuring the person or classes of persons specified in the policy to the extent specified in sub-section (ii) of that section. The case on hand will come under Sub-clause (ii) of Clause (b) of Section 147(1) of the Act which obliges the owner to take out insurance compulsorily against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.
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> Section 48 of the Act makes special provisions in regard to transport vehicles. Sub-Section (2) provides that a registering authority, when registering a transport vehicle, shall enter in the record of registration and in the certificate of registration, various particulars, Clause (d) provides that if the vehicle is used or adapted to be used for carriage of passengers, the number of passengers for whom accommodation is provided. Thus, the registration of the vehicle, which alone makes it usable on the road, records the number of passengers to be carried and the certificate of registration also contains that entry. So, an Insurance Company insuring the passengers carried in a vehicle in terms of Section 147(1)(b)(ii) of the Act, can only insure such number of passengers as are shown in the certificate of registration. The position is reinforced by Section 72 of the Act, which deals with grant of stage carriage permits. Sub-section (2) provides that when a permit is decided to be granted for a stage carriage, the Regional Transport Authority can attach to the permit one or more of the conditions specified therein. Clause (vii) is the condition regarding the maximum number of passengers that may be carried in a stage carriage. Overloading also invites a consequence which can be termed penal. Section 86 of the Act provides for cancellation of a permit if any condition contained in the permit is breached.

Therefore, the apparent wide words of Section 147 (1)(b)(ii) of the Act have to be construed harmoniously with the other provisions of the Act, namely, Section 58 and 72 of the Act. As early as in 1846, Dr.Lushington in R.V.Eduljee Byramjee (1846) 3 MIA 468, posited that to ascertain the true meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. This court has accepted this approach in innumerable cases. Thus, the expression 'any passenger' must be understood as passenger authorised to be carried in the vehicle and 'use of the vehicle ' as permitted use of the vehicle. Affording of insurance for more number of passengers than permitted, would be illegal since in that case, the manifest intention would be the overloading of the vehicle, something not contemplated by law. Thus, it is not possible to accept a contention that the insurance can be taken to cover more passengers than permitted by the certificate of registration and the permit as a stage carriage and that it will cover all the passengers overloaded. Of course, in these cases, there is no dispute that the insurance cover took in only the permitted number of passengers.

10. In the instant case, the vehicle is a lorry and the seating capacity as per copy of the Registration Certificate (Ex.B6) is 3, which includes the driver. Though the registering authority has issued a note (Ex.B7) stating that the permitted seating capacity is 2, it did not include the driver. Therefore, it can be safely concluded that the seating capacity of the vehicle is 3, including the driver. The appellants/ claimants are workers and on the date of accident, they were carrying tapioca in the lorry.

11. 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."

12. Fastening liability on the part of the insurer for more number of passengers than permitted would be illegal and the contention of the learned counsel for the appellants that

the insurance can be taken to cover more number of passengers than permitted by the Certificate of Registration of Vehicle cannot be accepted. The insurance taken out for the number of permitted passengers would alone determine the liability of the insurance company. In the instant case, only two claimants are entitled to get compensation from the insurance company, since the seating capacity in the lorry is 3 (including driver).

13. As far as the quantum of compensation is concerned, the tribunal awarded a just compensation of Rs.1,04,920/-, Rs.80,400/-, Rs.51,800/-, Rs.77,000/- under various heads in MCOP No.27 /2008, 28 / 2008, 48 / 2008 and 49 / 2008 respectively. Though the tribunal had awarded just compensation under various heads, has failed to award any amount towards "loss of Income". It is contended by the appellants/claimants that they were agriculturists/ load men earning a sum of Rs.6,000/- per month. However, in the absence of proof of income, monthly income of the appellants/claimants is fixed at Rs.3,000/- as the accident took place in the year 2007. On account of the accident, the appellants/claimants would not have been in a position to attend to their work at least for six months. Therefore, a sum of Rs.18,000/- is added to the compensation awarded by the tribunal and thus, the enhanced compensation is calculated as under.

CMA 1750 of 2012 (MCOP No.27 of 2008)

Compensation awarded	-	1,04,920/-
Loss of income	-	18,000/-
Enhanced compensation		1,22,920

CMA 1751 of 2012 (MCOP No.28 of 2008)

Compensation awarded	-	80,400/-
Loss of income	-	18,000/-
Enhanced compensation		98,400

CMA No.1752 of 2012 (MCOP No.48 of 2008)

Compensation awarded	-	51,800/-
Loss of income	-	18,000/-
Enhanced compensation		69,800

CMA No.1753 of 2012 (MCOP No.49 of 2008)

Compensation awarded	-	77,000/-
Loss of income	-	18,000/-
Enhanced compensation		95,000/-

The said enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

14. In the result,

i) The appeal in CMA No.1750 /2012, 1751 /2012, 1752 / 2012 and 1753/ 2012 are allowed in part. No costs.

ii) The compensation awarded by the tribunal in MCOP No.27/2008, 28/2008, 48/2008 and 49/2008 on the file of the Subordinate Judge, Motor Vehicle Accident Claims Tribunal, Attur dated 28.09.2011 is enhanced to Rs.1,22,920/-, Rs.98,400/-, Rs.69,800 and Rs.95,000/- respectively.

iii) The 2nd respondent, owner of the lorry is directed to deposit the enhanced compensation of Rs.69,800/- and Rs.95,000/- in MCOP No.48/2008 and 49 / 2008 respectively along with interest at the rate of 7.5% per annum, less the amount already deposited by him, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) The 3nd respondent, Insurance Company is directed to deposit the enhanced compensation of Rs.1,22,920/- and Rs.98,400/- in MCOP No.27/2008 and 28/2008 respectively along with interest at the rate of 7.5% per annum, less the amount already deposited by him, within a period of 4 weeks from the date of receipt of a copy of this order.

v) On such deposit being made by the 2nd and 3rd respondents, the claimants are entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Attur.

Copy To:
The Section Officer,
V.R.Section,
High Court, Madras.

+4 cc's to Mr.K.Varadha Kamaraj, Advocate Sr.Nos.3739 to 3742
+4 cc's to Mr.R.Jayaprakash, Advocate Sr.No.4258 to 4261

CMA.No.1750/2012, 1751/2012, 1752/2012 and 1753 / 2012

RSI(CO)
CSL/30.05.2019