IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2563 of 2011
and
M.P.No.1 of 2011

The Branch Manager,
United India Insurance Company Limited,
Tindivanam .. Appellant/2nd Respondent

Vs.

1.Minor Amutha
D/o.Jayaraj
(Rep.by N.F.Father & Guardian
Jayaraj) ...1st Respondent/Petitioner
2.Rajkumar
3.The Head Master,
Government Higher Secondary School,
Rettanai, Tindivanam Taluk
(R2 set exparte before the Tribunal)
.. Respondent 1&2/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.09.2009 made in M.C.O.P.No.377 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam.

For Appellant: Mr.D.Baskaran

For R1&R3 : No appearance

For R2 : Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Order and Decree dated 17.09.2009 made in M.C.O.P.No.377 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam.

2. The brief facts of this case are as follows:-

On 11.12.2003 at about 10.30 a.m., the claimant-Minor Amutha, a student and her schoolmates along with Teachers, were travelling by mini Lorry, bearing Registration No.TN 67 W 1757 proceedings from Rettanai to Thiruvakkarai village for Educational Tour. The driver of the above said mini lorry, drove the vehicle in a rash and negligent manner due to which, the lorry was capsized at Gingee to Kotteripattu road, near Muppuli village Primary Health Centre cutting road. As a result of the accident, the claimant and others were injured. Immediately, they were admitted in Government Hospital, Tindivanam and then was taken to a private nursing home, Tindivanam. According to her, still she is undergoing treatment, she was hale and healthy before the accident and after the accident, she is not able to attend to her work and studies.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.27,000/- with interest at 7.5% per annum.

4. Heard the learned counsel for the appellant and perused the materials available on record.

5. On the point of liability, the appellant/Insurance Company has come forward with this appeal questioning the liability fixed by the Tribunal for payment of compensation. The first respondent herein is a minor, who suffered injury. A school student and in the educational tour, number of students have travelled in the mini lorry to a remote village on educational tour purpose. During the travel, due to the rash and negligent driving of the driver of the lorry, the lorry capsized and students were injured. The first respondent is the one of the claimant.

6. Before the Tribunal, the Insurance Company filed a counter statement alleging that there is a violation of the policy condition and all the students are travelled as a passenger and as such, there is no contract to indemnify the owner and as such, the vehicle being a public transport vehicle goods carrier, they cannot take the passenger namely the school students. The Tribunal has taken note of the fact that the students have gone as educational tour and has held that owner as well as the Insurance Company are liable to pay compensation and awarded a sum of Rs.27,000/- as compensation with interest.

7. Aggrieved against the version of liability, the appellant/Insurance Company has preferred the appeal. The respondents were served and none represents.

8. After going through the policy and also taking into consideration the admitted case of the claimant that they travelled as a passenger, the appellant/Insurance Company is not liable to pay compensation for the injury sustained by the passenger travelled in the goods vehicle as a gratuitous passenger.

9. In view of the decision reported by the Division Bench of this Court in C.M.A.Nos.1529 to 1533 of 2015 in Bharati AXA General Insurance Company Limited Rep.by its Manager Vs.Aandi and others), the relevant portions of the judgments is as follows:-

> "50. In fact, we find that in none of the judgments referred to viz., National Insurance Company Limited 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 unauthorised 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.
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> 51. No doubt true that in many cases the claimants may not be able to realize 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".

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.

10. Accordingly, this Civil Miscellaneous Appeal is allowed. The owner of the vehicle is alone liable to pay the compensation and the appellant/Insurance Company is exonerated. Accordingly, the owner of the vehicle shall deposit the compensation amount before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. Thereafter, the first respondent-claimant shall withdraw the amount as per law. If any amount is deposited by the Insurance Company, the same shall be returned to them by the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(Additional Subordinate Judge) at Tindivanam.

2.The Chief Judicial Magistrate,
Villupuram(for information)

3.Rajkumar,S/o.Elumalai Gounder,
Kadai veethi,
Rettanai & Post,
Tindivanam Taluk.

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

+1cc to M/s.D.Bhaskaran, Advocate SR.20646

C.M.A.No.2563 of 2011 and
M.P.No.1 of 2011

CNR(CO)
CB(16/12/2019)