IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.11.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.2473 of 2013
and
M.P.No.1 of 2013

The New India Assurance Company Limited,
No.114, Main Road, Nellikuppam,
Cuddalore District. ... Appellant/2nd Respondent

Vs.

1.Kolanji ...Respondents 1& 2/Petitioner

2.Gandhi

3.Senthamizhselvi ...3rd Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.03.2010 passed in M.C.O.P.No.105 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam.

For Appellant : Mr.N.Vijayaraghavan
For RR 1 & 2 : Mr.A.Murugan
For R3 : No appearance

J U D G M E N T

The appellant / New India Assurance Company Limited is the second respondent in M.C.O.P.No.105 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam. The respondents 1 and 2 filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.4,00,000/- for the death of their son Iyyappan in a road accident on 13.03.2009.

2. The case of the claimants is that on 13.03.2009, while the deceased Iyyappan was traveling in a trailor bearing Registration No. TN 31 AZ 5736 attached with a tractor bearing Registration No. TN 31 AZ 3177 on Athamatham - Chennai main road, the driver of the tractor drove the vehicle rashly and negligently, as a result of which, the deceased fell down and died on the spot. According to the claimants, the rash and

negligent driving of the driver of the tractor belonging to the third respondent was the cause of the accident and that since the said tractor was insured with the present appellant / New India Assurance Company Limited the owner and the insurer are jointly and severally liable to pay compensation.

3. The third respondent / owner of the tractor remained absent before the Tribunal and therefore she was set ex-parte. The appellant / New India Assurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Virudhachalam, after analysing the evidence on record, awarded a compensation of Rs.4,00,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the appellant / New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant / New India Assurance Company Limited, contended that since the deceased was a gratuitous passenger in a tractor, the Tribunal was wrong in fastening liability on the Insurance Company. He therefore prayed for exonerating the Insurance Company from paying compensation to the claimants.

5. Per contra, Mr.A.Murugan, learned counsel appearing for the respondents 1 and 2 / claimants contended that since the deceased Iyyappan was a loadman working under the owner of the tractor, the Insurance Company is liable to pay compensation.

6. No appearance on behalf of the third respondent / owner of the tractor.

7. In the instant case, admittedly the deceased was sitting on the trailor. The Tribunal had concluded that since the deceased was a cleaner in the tractor and was employed by the owner of the Tractor, he was not a gratuitous passenger. It is to be pointed out that the owner of the tractor remained absent before the Tribunal and was set exparte. The claimants did not adduce any evidence to show that the deceased was a cleaner in the tractor. Even assuming that he was a cleaner on the date of accident, he cannot sit on the load area.

8. 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."

9. 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".

10. 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.

11. In the instant case, the deceased was admittedly sitting in the load area and definitely, he will not be covered under the policy.

12. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the respondents 1 and 2 / claimants and a perusal of the award shows that the compensation awarded by the Tribunal is just and reasonable. Therefore, the quantum of compensation awarded by the tribunal is upheld.

13. In the result,

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

(ii) The order of the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle is set aside.

(iii) The appellant / New India Assurance Company Limited is exonerated from paying the compensation amount.

(iv) The quantum of compensation passed by the Tribunal is upheld.

(v) The third respondent / owner of the tractor is directed to deposit the compensation amount i.e., Rs.4,00,000/- 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.105 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam, within a period of four weeks from the date of receipt of a copy of this order.

(vi) The appellant / New India Assurance Company Limited is at liberty to withdraw the amount, if already deposited by them.

(vii) On such deposit being made, the respondents 1 and 2 / claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal after following due process of law.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

krk
To

The Motor Accidents Claims Tribunal,
The Additional Subordinate Judge,
Virudhachalam.

2.The Section officer
VR section
High Court of Madras

+1 cc to M/s.M.B.Gopalan Advocate sr94242
+1 cc to M/s.A.Murugan Advocate sr93731

C.M.A.No.2473 of 2013

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