

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.3742 of 2012
and
M.P.No.1 of 2012

The Branch Manager,
New India Assurance Co. Ltd.,
163, MG Puram,
Perambalur.

...Appellant/2nd respondent
vs.

1.Veeramani .. Petitioner/1st respondent

2.G.Ravichandran ...1st Respondent/2nd respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.06.2012 passed in MCOP.No.116 of 2011, on the file of the Motor Accident Claims Tribunal / Principal District and Sessions Judge, Ariyalur.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : No appearance

J U D G M E N T

The Branch Manager, New India Assurance Company, the second respondent in MCOP.No.116 of 2011, on the file of the Motor Accident Claims Tribunal / Principal District and Sessions Judge, Ariyalur has filed the present appeal. The first respondent / claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 19.03.2009.

2. The case of the claimant in nutshell is as follows:

On 19.03.2009, the claimant was travelling in a trailer bearing Registration No.TN 46 E 7162 attached to a tractor bearing Registration No. TN 46 E 7132 on Andimadam - Jayankondam road. When the tractor was nearing Andimadam burial ground, the driver of the tractor drove the vehicle rashly and negligently and hit a tipper lorry coming on the opposite direction, as a result of which, the claimant fell down and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the tractor belonging to the second respondent was the cause of the accident and that since the said tractor was insured with the present appellant, the owner and the insurer are

jointly and severally liable to pay compensation.

3. The owner of the tractor and trailor remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant / New India Assurance Company contested the claim petition on all the grounds available to the insured. The learned Principal District and Sessions Judge, Ariyalur while awarding compensation of Rs.20,000/- together with interest at the rate of 7.5% per annum to the claimant, concluded that the owner and the insurer of the tractor are jointly and severally liable to pay compensation. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the New India Assurance Company contended that since the claimant travelled in the tractor as a gratuitous passenger, the Tribunal is wrong in fastening liability on the Insurance Company. He also drew the attention of this Court to the claim petition and a copy of the First Information Report filed by the claimant and contended that the claimant was studying B.Sc. Computer Science in Jayankondam Modern College and therefore, he travelled in the tractor only as a gratuitous passenger and not as a load man.

5. No appearance on behalf of the respondents.

6. 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."

7. 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".

8. 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.

9. In the instant case, the injured was admittedly sitting on the trailer (load area) and definitely, he will not be covered under the policy.

10. In the decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others reported in 2019 ACJ 1975, 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 New India Assurance company to pay the award amount is liable to be set aside, in as far as the liability of the appellant is concerned.

11. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the first respondent / claimant. A perusal of the award also shows that it is just and reasonable compensation.

12. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal directing the New India Assurance Company to pay the compensation is set aside.

(iv) The owner of the tractor and trailer is directed to deposit the compensation awarded by the Tribunal i.e., Rs.20,000/- 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 MCOP.No.116 of 2011 on the file of the Motor Accident Claims Tribunal / Principal District and Sessions Judge, Ariyalur within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same, after following the due process of law.

(vi) The appellant is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Principal District and Sessions Court,
Ariyalur.

Copy to:

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

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 87884

CMA.No.3742 of 2012
and

M.P.No.1 of 2012

A.SK(16/07/2020)