

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 699 of 2015

Thangayee

.. Appellant/Petitioner

Vs.

1.Periyasamy

2.Jayakumar

3.The New India Assurance Co., Ltd.,
Office at Premier Complex,
Ground Floor,
No.102, Yercadu Junction Road,
Five Road,
Salem.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 26.02.2010, made in M.C.O.P.No.101 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Attur, Salem District.

For Appellant : Mr.L.Rajendran

For R3 : Mr.J.Chandran

For R1 & R2 : Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 26.02.2010, made in M.C.O.P.No.101 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Attur, Salem District.

2.The appellant/claimant filed M.C.O.P.No.101 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Attur, Salem District, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident

that took place on 16.10.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the mini door van belonging to the first respondent and held that the appellant travelled in the goods vehicle as unauthorized passenger and exonerated the 3rd respondent-Insurance company from its liability and directed the first respondent, being the owner of the vehicle to pay a sum of Rs.1,03,000/- as compensation to the appellant and dismissed the claim petition against the respondents 2 and 3.

4.Against the said award dated 26.02.2010, made in M.C.O.P.No.101 of 2006, the appellant has come out with the present appeal to set aside the portion of award dismissing the claim petition against the respondents 2 and 3.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in directing the first respondent, owner of the vehicle to pay the compensation and exonerating the insurance company, when the policy was in force. When there is any violation of policy condition, the Tribunal ought to have directed the Insurance Company to pay the compensation at the first instance and recover the same from the owner of the vehicle and prayed for setting aside the portion of the award exonerating the Insurance Company and to order pay and recovery.

6.Mr. J. Chandran, learned counsel appearing for the third respondent-Insurance Company contended that appellant travelled as unauthorized passenger in the commercial vehicle. It is well settled that the Insurance Company is not liable to pay any compensation for death or bodily injuries of unauthorized passengers who travel in a commercial vehicle and Tribunal considering the entire materials, rightly dismissed the claim petition as against the Insurance-Company and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellant as well as the third respondent and perusal the entire materials available on record.

8.From the materials on record, it is seen that the appellant has stated in the claim petition itself that she along with others have travelled in a commercial Vehicle as passengers. She has not stated that she travelled as owner or authorized representative of owner along with goods. The averments in the claim petition as well as evidence before the

Tribunal clearly reveal that the appellant travelled as unauthorized passenger in a commercial vehicle. The Insurance Company is not liable to pay compensation to the passengers who travelled in the goods vehicle. In the five appeals arising out of the same accident, a common award was passed by the Division Bench of this Court in the judgment reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others). The Division Bench of this Court allowed the five appeals holding that the claimants travelled only as gratuitous passengers in the vehicle and the Insurance Company is not liable to pay any compensation to the claimants and only owner of the vehicle is liable to pay compensation. The relevant paragraphs from the said judgment are extracted hereunder:

"49. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

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.

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."

I had an occasion to consider the very same issue in C.M.A.Nos. 980 to 982 of 2019, wherein by order dated 15.02.2019, I have negatived the claim made against the Insurance Company. The ratio in the said judgment is also squarely applicable to the facts of the present case.

9. In view of the above, the appeal is dismissed and the amount awarded by the Tribunal at Rs.1,03,000/- along with interest and costs is confirmed. The first respondent-owner of the vehicle is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and cost, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Attur, Salem District.

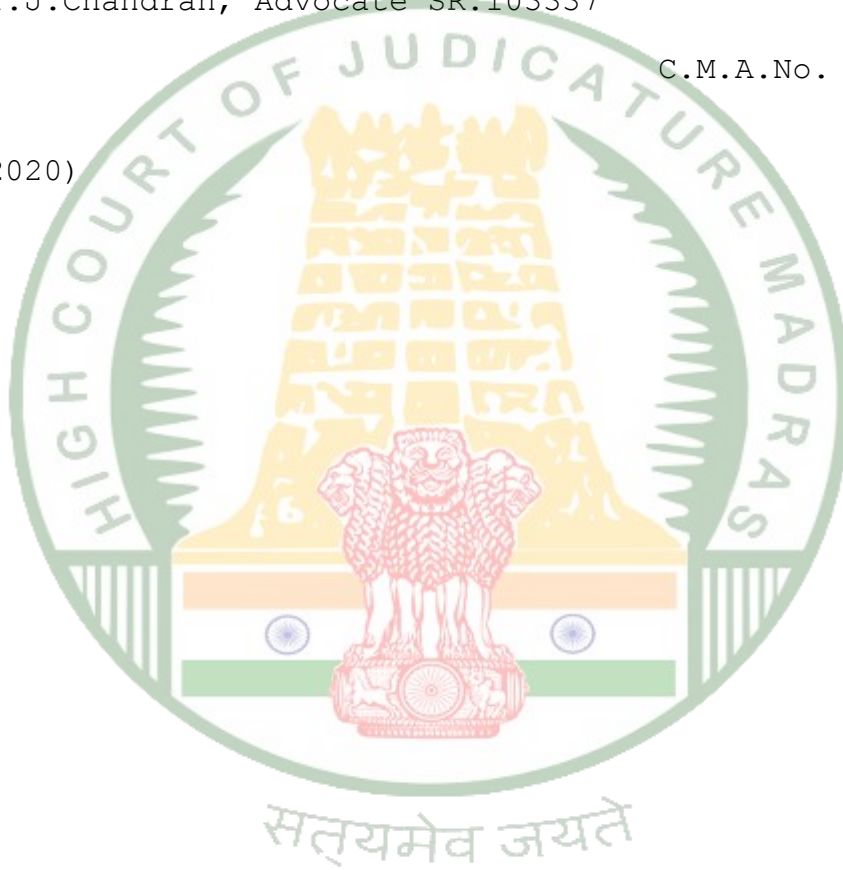
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.L.Rajendran, Advocate SR.103600

+1cc to Mr.J.Chandran, Advocate SR.103337

C.M.A.No. 699 of 2015

SR(CO)
CB(08/09/2020)



WEB COPY