IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.252 OF 2014

The Branch Manager,
M/s.The Oriental Insurance Co., Ltd.,
No.555/1, G.H.Road,
Perambalur ... Appellant/2nd Respondent

Vs.

1. Nirmala
2. Minor S.Vaishnavi
3. Minor S.Senthupathi
   Minors are represented by their
   mother and Natural guardian Nirmala
4. P.Ramsamy
5. R.Poongavanam
6. R.Radhakrishnan

... Respondents/Petitioners 1 to 5 & 1st Respondent

Prayer:-
This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 30.04.2013 passed in M.C.O.P.No.264 of 2010 on the file of Motor Accident Claims Tribunal and Principal District Judge, Perambalur.

For Appellant	:	Mr.R.Sivakumar
For R1 to R5	:	Mr.S.Kamadevan
For R6	:	No Appearance

J U D G M E N T

The second respondent/the Branch Manager, M/s.The Oriental Insurance Co., Ltd., in M.C.O.P.No.264 of 2010 on the file of the Principal District Judge/Motor Accidents Claims Tribunal, Perambalur has filed the present appeal against the award dated 30.04.2013.

2. On 23.05.2007, the deceased Sekar was travelling as a load man cum cleaner in a tractor bearing Reg.No.TN 31 Z 1549

belonging to the first respondent. When the tractor was nearing Allinagaram bye pass road, the driver of the tractor drove the vehicle rashly and negligently, as a result of which the tractor toppled and the deceased died on the spot. According to the claimants the rash and negligent driving of the driver of the tractor was the cause of the accident. Sine the tractor was insured with the present appellant they are jointly and severally liable to pay compensation to the claimants. The Tribunal held that the driver of the vehicle was responsible for the accident and directed both the owner of and tractor and the Insurance Company(appellant herein) to jointly and severally pay the award amount of Rs.6,92,000/- together with interest at the rate of 7.5 % per annum to the claimants.

3. Mr.R.Sivakumar, the learned counsel for the appellant contended that since the deceased was sitting on the tractor, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay the compensation.

4. Per contra, Mr.S.Kamadevan, learned counsel appearing for respondents 1 to 5 contended that since the deceased was travelling in the tractor as a load man cum cleaner, the Insurer should be made liable to pay the compensation amount awarded to the claimants.

5. 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."

6. 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".

7. In the instant case, the deceased was admittedly sitting on the tractor and definitely he will not be covered under the policy. Even though it is contended that he was working under

the first respondent as load man cum cleaner of the vehicle and travelled only in the area earmarked for sitting, since there is no seating capacity in the tractor, the load man cannot travel in the tractor.

8. In the decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

> 48.Coming to the latest judgment viz., Shivaraj v. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company v. Asha Rani and others or National Insurance Company Ltd., v. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj v. Rajendra and another referred to supra.
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> 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.

9.Therefore, the order passed by the tribunal directing the Insurance company to pay the award amount is liable to be set aside, in as far as the liability of the appellant /Insurance company is concerned.

10. In the result,

(i) The appeal is allowed. No costs.

(ii) The award amount of Rs.6,92,000/-, passed by the trial court shall be paid by the owner of the tractor.

(iii) The appellant/Insurance Company is entitled to withdraw the amount, if already deposited by them.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accident Claims Tribunal, Perambalur.

Copy To
The Section Officer,
VR Section, High Court,Madras-104.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.80031
+1cc to Mr.S.Kamadevan, Advocate, S.R.No.79990

CMA.No.252 of 2014

PA(CO)
CS/15/07/2020
CS/04/08/2020