IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1806, 1814 & 1829 of 2008

The Oriental Insurance Company Limited
Hindupur. .. Appellant in all the appeals/ Respondent-II

Vs.

1.Mani .. 1ST Respondent/Petitioner
2.Ramachandra Achary .. IInd Respondents in C.M.A.No.1806 of 2008/1ST Respondent

1.Perumal .. 1ST Respondent/Petitioner
2.Ramachandra Achary .. IInd Respondents in C.M.A.No.1814 of 2008/1ST Respondent

1.Marimuthu .. 1ST Respondent/Petitioner
2.Ramachandra Achary .. IInd Respondents in C.M.A.No.1829 of 2008/1ST Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.12.2007 made in M.C.O.P.Nos.197, 198 & 200 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur, Krishnagiri District.

In all C.M.As

For Appellant : Mr.J.Chandran

For R1 : Mr.M.Selvam

For R2 : No appearance

C O M M O N   J U D G M E N T

These Civil Miscellaneous Appeals are filed by the Insurance Company against the award dated 11.12.2007 made in M.C.O.P.Nos.197, 198 & 200 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur, Krishnagiri District.

2. All the three appeals are arising out of the same accident and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.According to the claimants, on the date of accident i.e. on 17.05.2005, the claimants and other labourers were travelling in the Goods Van CTA 7889, belonging to the 1st respondent, to go to Chandapur. They carried building materials like concrete mixture etc., along with them to do building work. After finishing the work, the claimants returned in the same Tempo Van along with the materials to Hosur. On the way from Chandapur to Hosur road near Yadavanapalli Gate at about 06.30 PM, due to rash and negligent driving of the Tempo by its driver, the Tempo went out of road and toppled on the left side of the road and caused the accident. Due to the said impact, the claimants sustained grievous injuries all over the body. Hence, the claimants have filed the above claim petitions claiming compensation.

4.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.Nos.197, 198 & 200 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur, Krishnagiri District respectively. The claimants in all the three appeals filed the above said claim petitions claiming a sum Rs.3,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 17.05.2005.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the tempo van belonging to the 1st respondent and directed the 2nd respondent being insurer of the said van to pay a sum of Rs.1,00,000/-, Rs.20,000/- & Rs.1,53,600/- as compensation to the claimants at first instance and recover the same from the 1st respondent.

6.Against the common award dated 11.12.2007 made in M.C.O.P.Nos.197, 198 & 200 of 2005 granting compensation to the claimants, the 2nd respondent/Insurance Company has come out with the present appeals.

7.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal having held that the claimants travelled as a unauthorized passengers, ought to have exonerated the Insurance Company from its liability. The Tribunal erred in ordering pay and recovery, when the appellant is not liable to pay any compensation. The judgments relied on by the Tribunal relates to non-possession of driving license and it does not relate to the facts of the present case. The Tribunal ought to have followed the judgment of the Hon'ble Apex Court reported in 2003 ACJ 1 (New India Assurance Company Limited vs. Asha Rani) and exonerated the Insurance Company from its liability. The claimants travelled in the tempo van as unauthorised passengers and hence, the 2nd respondent is not liable to pay any compensation. The unauthorised passengers are not covered under the policy issued under Section 147(1) of the Motor Vehicles Act and prayed for setting aside the award of the Tribunal.

8.The learned counsel appearing for the claimants contended that even if the owner of the vehicle violated the policy and permit conditions, the Insurance Company cannot be exonerated from its liability. The Tribunal has rightly ordered pay and recovery. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

9.Though notice has been served on the 2nd respondent and its name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

10.Heard the learned counsel appearing for the claimants as well as 1st respondent and perused the materials available on record.

11.From the materials available on record, it is seen that the claimants in the claim petitions have stated that they have travelled in the Tempo Van from Chandapur to Hosur. The driver of the Tempo Van drove the same in a rash and negligent manner and caused the accident. The claimants suffered grievous injuries in the accident. The claimants have not stated in the claim petition that they travelled along with the goods as owner of the goods or authorised representatives of the owner. It is not the case of the claimants that they travelled in the vehicle as coolies. The 2nd respondent/Insurance Company has taken a specific stand that the claimants were passengers in the commercial vehicle. As per Section 147(1) of the Motor Vehicles Act, the insurance policy issued by the Insurance Company covers the claim of third party against owner of the vehicle and the Insurance Company as an insurer is made liable to pay the compensation claimed by the third parties against the owner of the vehicle. By amendment, the scope of Section 147(1) was enlarged to cover the risk of owner of goods or his authorized representative, who travel in the commercial goods vehicle along with other goods. Section 147(1) does not cover the liability of the passenger who travel in the goods vehicle as passenger. The issue whether the Insurance Company is liable for the claim made by the passenger in the goods vehicle who suffered bodily injury or legal representative of the deceased passenger is no longer resintegra. In a number of judgments, this Court as well as the Hon'ble Apex Court have held that the Insurance Company is not liable to pay compensation to an unauthorized passenger or gratuitous passenger who travelled in a goods vehicle. The Tribunal and the Courts have no power to order pay and recovery also when there is no liability on the Insurance Company to pay any compensation. This issue was elaborately considered by the Division Bench of this Court in the following judgment reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others);

> "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.
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> 50.In fact, we find that in none of the judgments referred to viz., National Insurance Co.Ltd. v. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) :2004 (3) SCC 297; Mangla Ram V. Oriental Insurance Co. Ltd. 2018 (1) TN MAC 681 (SC) : 2018 (5) SCC 656 ; Rani & ors. v. National Insurance Co.Ltd. & ors., 2018 (2) TN MAC 278 (SC) : 2018 (9) Scale 310; and Manuara Khatun and others v. Rajesh Kumar Singh and others, 2017 (1) TN MAC 289 (SC) : 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 v. 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 India Assurance Company v. Asha Rani and others; and National Insurance

Co. Ltd. v. 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."

The Hon'ble Apex Court considering various judgments regarding this issue allowed the appeals filed by the Insurance Company setting aside the award directing the 1st respondent/owner of the vehicle to pay compensation. The award passed by the Tribunal directing the 2nd respondent/Insurance Company to pay compensation to the claimants at the first instance and recover the same from the 1st respondent/owner of the vehicle is set aside.

12.In the result, all the appeals are allowed and the Judgement and Decree passed by the Tribunal are set aside only with regard to the exoneration of the appellant Insurance Company. The 1st respondent/owner of the vehicle shall pay compensation to the claimants for the sum of Rs.1,00,000/-, Rs.20,000/- & Rs.1,53,600/- respectively with interest thereon at the rate of 9% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is permitted to withdraw the entire amount deposited by them, if any. The 1st respondent/owner of the vehicle is directed to deposit the entire award amount as determined by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CO-V)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Subordinate Judge,
   The Motor Accident Claims Tribunal
   Hosur, Krishnagiri District.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.7780
+1cc to Mr.M.Selvam, Advocate, S.R.No.7123

C.M.A.Nos.1806, 1814 & 1829 of 2008

PVS(CO)
CT(13/08/2021)