IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1259 of 2013
and
MP No.1 of 2013

The Branch Manager,
The Oriental Insurance Co. Ltd.,
City Branch Office,
No.14
No.19/11, First Cross,
Chikkanna Garden,
Chamrajapura,
Bangalore - 4. .... Appellant/2nd Respondent

Versus

1. S. Babu
2. N.Nagaraju .... Respondents/Petitioner/1st Respondent
(2nd Respondent exparte in Lower Court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.1093 of 2007, dated 14.11.2011, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.Rajadurai
for Mr.M.B.Gopalan

For Respondents : Mr.M.Devaraj for R1
Not ready in notice reg. R2

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 14.11.2001 passed by the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri in MCOP No.1093 of 2007.

2. The appellant / Insurance Company has challenged the impugned award on the ground that the first respondent / claimant was an unauthorised passenger in the insured goods vehicle and therefore, they are not liable to compensate him.

3. Heard Mr.Rajadurai, learned counsel for the appellant and Mr.M.Devaraj, learned counsel for the first respondent.

4. This Court has perused the materials and evidence available on record before the Tribunal.

5. The learned counsel for the appellant brought to the notice of this Court that fifteen passengers travelled in the insured vehicle, who were all unauthorised passengers and one of them is the injured / first respondent, which is the subject matter of this appeal. He also drew the attention of this Court to Ex.R2, which is the decree and judgment copy passed in MCOP No.306 of 2006, which was filed by the appellant / Insurance Company in a connected claims involving another person who also travelled in the same goods vehicle as an unauthorised passenger and died, wherein, the Tribunal has exonerated the appellant / Insurance Company from any liability. According to the learned counsel for the appellant, despite the said finding by total non application of mind, the Tribunal has passed pay and recovery against the appellant under the impugned award instead of totally exonerating them from any liability.

6. It is not in dispute that the Tribunal in MCOP No.306 of 2006 in a connected matter involving another person, who also died in the same accident had exonerated the Appellant / Insurance Company from any liability, in view of the fact that the said deceased was travelling as an unauthorised passenger. The first respondent / claimant in this appeal was also one amongst the 15 members, who were travelling in the same goods vehicle at the time of the accident. The seating capacity of the insured vehicle, as seen from the insurance policy, which was marked as Ex.R1 will reveal that it can carry only 1+1 i.e. Driver as well as another person that too only in the cabin. However, in the case on hand, the first respondent / claimant has admitted in his pleadings that he was a flower vendor travelling in the said goods vehicle(insured vehicle). Being a flower vendor, and a person, who was not accompanying the goods, if at all there was any, he can be treated only as an unauthorised passenger. As rightly held in a connected claim in MCOP No.306 of 2006, the Appellant / Insurance Company was exonerated from any liability as the deceased was an unauthorised passenger.

7. The decision of the Hon'ble Full Bench of this Court in the case of the Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town versus Nagammal and 2 others reported in 2009 1 CTC 1, has been followed by the latest decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Company Ltd. vs. Aandi and two others reported in 2018 2 TNMAC 731 DB supports the case. The evidence available on record also clearly indicates that the first respondent / claimant was an unauthorised passenger in a goods vehicle. The insurance company ought to have been exonerated from any liability by the Tribunal, but by total non application of mind and without assigning any reason has

passed pay and recovery rights against the appellant / Insurance Company under the impugned award. Accordingly, the said findings will have to be set aside by this Court and the appeal will have to be allowed in sofar as the award against the appellant is concerned.

8. Insofar as the award passed against the owner and the Driver of the insured vehicle are concerned, the same is confirmed and the first respondent/ claimant is permitted to proceed against them for recovery of compensation as awarded by the Tribunal under the impugned award.

9. In the result, this appeal filed by the appellant / Insurance Company stands allowed by setting aside the pay and recovery rights passed against the appellant. However, the first respondent / claimant is permitted to execute the impugned award against the second respondent as the award passed against him has not been disturbed by this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vsi2

To

1. The Additional District Judge,
Motor Accident Claims Tribunal
Dharmapuri.

2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai - 104.

+1cc to Mr.M.Devaraj, Advocate SR.No.25729

C.M.A.No.1259 of 2013

NMI(CO)
GMY(08/09/2020)