IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.11.2020	PRONOUNCED ON: 30.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.235 of 2010
& M.P.Nos.1 & 2 of 2010

National Insurance Company Ltd.,
Registered Office,
No.3, Middle Street,
Post Box No.9229,
Calcutta – 700 071. ...Appellant/2nd Respondent

/versus/

1. Settu ...1st Respondent/Petitioner
2. P.Murugan. ...2nd Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the award and decree dated 09.09.2009 made in M.C.O.P.No.120 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No.II), Salem.

For Appellant : Mr.D.Baskaran

For Respondents: No appearance

J U D G M E N T
(The case has been heard through video conference)

This Appeal is filed against the award passed by the Motor Accident Claims Tribunal, Salem being aggrieved by the liability fixed on the appellant/Insurance Company to compensate the accident victim, who travelled along with the buffaloes and his friend Ganesan in a goods vehicle insured under the Appellant company.

2. The facts of the case is that, on 27.08.2004, at about 4.00 am, the canter van bearing registration No.TN-39-J-8989 driven by one Madhu along with 13 buffaloes and its owner Sethu and one Ganesan, got capsized near Theevattipatti Agraharam near Salem, while applying sudden break to avoid the lorry going ahead of the van. In the accident, two buffaloes died. The driver, cattle owner Sethu and the other passenger Ganesan sustained injuries. The information to the police about the

accident was given by Sethu and F.I.R was registered by the Theevattipatti police against the driver of the van.

3. Sethu, the 1st respondent herein filed M.C.O.P.No.120 of 2005 claiming compensation of Rs.5,00,000/- jointly and severally against the owner of the canter van, 2nd respondent herein and its insurer the appellant herein.

4. The Insurance Company contested the claim on the ground that the driver of the canter van had no valid driving license. The owner of the van had violated the policy condition. Hence, he alone is liable to pay compensation if any. The vehicle had no valid insurance coverage. The claimant was travelling in the van as unauthorised passenger at the time of accident. There is no insurance coverage for passenger travelling unauthorisedly. Hence, the Insurance Company has to exonerated from any liability.

5. Before the Tribunal, on behalf of the claimant, 2 witnesses and 10 Exhibits were marked. On behalf of the Insurance Company, 2 witnesses and 3 Exhibits were marked. The Tribunal, on considering the evidence placed before it held that, Ex.R-1 the Insurance policy reveals premium has been paid for two employees. There is no material to construe that more than two persons were travelling in the said vehicle. In view of Ex.B-1 to Ex.B-3 and the evidence of R.W-2, the Junior Assistant working in Salem R.T.O held that, there is enough evidence to show the driver Madhu not renewed his license from 25.07.2003 to 30.08.2007. Since, the date of accident was 27.08.2004, the insurer is liable to pay the compensation amount and recover from the insured. The Tribunal, awarded a sum of Rs.2,60.800/- as compensation payable to the claimant by the Insurance Company and to recover from the owner of the vehicle in view of the policy violation.

6. The award is impugned in this appeal on the ground that, the Tribunal failed to note that passengers are not permitted to travel in the goods vehicle and the Insurance Company is not liable to the passengers travelling in the goods vehicle. The Tribunal, instant of exonerating the insurance company, contrary to the evidence and law, had directed the Insurance Company to pay the compensation and then to recover from the insured. Since the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle has to be exonerated from its liability to pay the compensation.

7. Heard the Learned counsel for the appellant.

8. The issue before the Court for consideration is whether the Insurer/appellant has to be totally exonerated or directed to pay and permitted to recover from the insured.

9. As per F.I.R given by Sethu, (the claimant/1st respondent herein), the accident occurred due to the negligence of the van

driver. The vehicle is a goods vehicle and in that vehicle, apart from the driver two other passengers were travelling along with 13 buffaloes.

10. Ex.R-1 is the copy of the insurance policy issued by the appellant for the Eicher Van bearing Registration No.TN-37-J-8989. The coverage period is from 04.04.2004 to 03.04.2005 midnight. Rs.3,280/- for third party basic; Rs.50/- for WC to employee (2); Rs.1,133/- after deducting NCB 50% for own damage basic; Rs.333/- for loading on TP premium; and Rs.384/- as service tax collected from the insured. The policy condition mandates that the vehicle should be driven by a person holding effective driving licence at the time of accident and is not disqualified from holding or obtaining such a license.

11. The Tribunal, on considering the premium collected and the coverage offered had held that the claimant is the owner of the cattle transported in the goods vehicle. Since the insurance company has collected premium to cover the risk of two employees, it is liable to pay. Also, taking note of the fact that, on the date of accident (27.08.2004) the driver of the vehicle had no driving license, held that there is violation of policy condition. Therefore, permitted the insurer to recover from the insured after payment to the claimant.

12. The law has been now well settled that the owner of the goods travelling in a goods vehicle accompanying the goods is entitled to claim compensation, provided premium paid for the passenger. In this case, the claimant is the owner of the goods. The accident has occurred while he was travelling along with the goods. The premium is paid only for employees (2). No doubt, the claimant is the owner of the goods but not the employee of the insured. However, the Insurance Company having collected premium for two employees and also collected premium for loading risk, as an owner of the goods, the claimant is entitled for compensation. Since, there is violation of policy condition, it is appropriate to permit the insurer to recover the money back from the insured. Hence, impugned order of the Tribunal to pay the compensation and recover from the vehicle owner is upheld.

13. As a result, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Motor Accidents Claims Tribunal
(Special Sub Court No.2),
Salem.

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

C.M.A.No.235 of 2010
& M.P.Nos.1 & 2 of 2010

CNR(CO)
RGA(12/08/2021)