IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.625 & 626 of 2010
and
M.P.Nos.1 & 1 of 2010

M/s.United India Insurance Company Ltd.,
Rep., by its Divisional Office at Christo Building,
Bank Road,
Ootacamund,
The Nilgris ...Appellant/3rd Respondent in both CMA

Vs.

Nanjamma ...Ist Respondent/Claimant in CMA 625 of 2010

M.Manjula ...Ist Respondent/Claimant in CMA 626 of 2010
R.Senthilkumar
S.Karim ...Respondents 2 & 3/Respondents 1 & 2 in both CMAs
(R3 set ex-parte in the lower Court)

Prayer in C.M.A.No.625 of 2010: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.08.2009 made in M.C.O.P.No.40 of 2008 on the file of Motor Accident Claims Tribunal,District JUdge, The Nilgris at Udhagamandalam.

Prayer in C.M.A.No.626 of 2010 : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.08.2009 made in M.C.O.P.No.41 of 2008 on the file of Motor Accident Claims Tribunal,District JUdge, The Nilgris at Udhagamandalam.

For Appellant : Mr.S.Arunkumar in both C.M.As.

For R2 : Mrs.R.Gowri in both C.M.As.

COMMON JUDGMENT

The appellant herein is the third respondent in M.C.O.P.No.40 & 41 of 2008 on the file of the Motor Accidents Claims Tribunal / District Court, The Nilgris at Udhagamandalam. The claimants filed the claim petitions under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the MACT Rules seeking compensation of Rs.4,00,000/- for the injuries sustained by the injured/ claimants in a road accident that took place on 29.10.2007.

2. The case of the claimants is that on 29.10.2007, the first respondent in C.M.A.625 of 2010 along with her husband and daughter Manjula/first respondent in C.M.A.No.626 of 2010 were travelling in Mahindra Pick-up van bearing Regn.No.TN-3-B-2004 by leading the household articles from her elder daughter's house at Bangalore to Udhagamandalam and at about 01.45 A.M., while the van was driven by the third respondent (in both C.M.As) in a rash and negligent manner, thereby it went off the road, rolled and fell down into the valley to a depth of about 200 feet. In the said accident, the claimants were sustained multiple injuries all over their body.

3. The owner of the offending vehicle remained absent before the Tribunal and therefore, he was set exparte. The United India Insurance Company Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / District Judge, Nilgris at Udhagamandalam after analysing the evidence on record awarded a compensation of Rs.71,000/- and Rs.61,000/- respectively to the claimants together with interest at the rate of 7.5% per annum. Questioning the quantum of compensation, the United India Insurance Company Limited filed the present CMA.Nos.625 & 626 of 2010.

4. The learned counsel for the appellant contesting that the vehicle involved in the accident is a goods carrier vehicle. In which, the claimants have trvelled and the policy covering the vehicle does not permit any coverage for the persons carried in the vehicle. Therefore, the direction of the Tribunal directing the Insurance Company to pay the amount is not sustainable. If at all, the claimants are aggrieved that to proceed against the owner of the vehicle by filing proper application in accordance with law. In support of his contention he relied on the judgment reported in Bharati AXA General Insurance Co.Ltd., vs. Aandi and anothers reported in 2015 TN MHC.

5. Learned counsel for the second respondent submited that though the policy conditions does not permit carrying persons in the goods carrier vehicle. However, it has been a considered

view of the Hon'ble Supreme Court to direct the Insurance Company to pay the claimants and thereafter, recover the said amount from the owner of the vehicle. The said direction is being issued by the Hon'ble Supreme Court only to give an immediate relief to the claimants as it would be very difficult for them to proceed against the owner of the vehicle.

6. There is no dispute with regard to the accident or the injuries sustained by the claimants. The only condition is that the policy condition does not permit travelling of persons in the goods carrier vehicle and therefore, the insurance company in not liable to pay the compensation to the claimants. In the decision made in Bharati AXA General Insurance Co.Ltd., vs. Aandi and anothers reported in 2015 TN MHC is as follows:

> " 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. 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. NationalInsurance 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 compensatin 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".

7.In the result, the Civil Miscellaneous Appeals are 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., third respondent in both C.M.As., and the award against the Insurance Company will stand set aside. No costs. consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sbn
To

The Motor Accident Claims Tribunal,
District Judge,
The Nilgris at Udhagamandalam.

+1cc to Mr.S.Arunkumar, Advocate Sr.11022
+1cc to Mr.S.Kingston Jerold, Advocate Sr.10330

C.M.A.Nos.625 & 626 of 2010
and
M.P.Nos.1 & 1 of 2010

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srg 11/03/2021