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.1461 of 2015

M/s. National Insurance Company Ltd.,
Branch Office,
Mettur Dam. ...Appellant/2nd Respondent

/versus/

1. Ganesan,
S/o.Govindan,
rep. by next friend/guardian,
wife of Suseela,
Address: 72 F, Kallankuthu,
Arunachala Aasari Street,
Salem-1. ..1st Respondent/Petitioner

2. P.Murugan,
S/o.Palaniappa Gounder,
No.2/94-A, Koil Street,
M.Chettypatty Post,
Mettur Taluk,
Salem District. ...1st Respondent/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the award and decree dated 04.02.2015 made in M.C.O.P.No.1824 of 2004 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), 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)

The Appeal by the Insurance Company.

2. 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 as an unauthorised

passenger in the goods vehicle.

3. 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 Ganesan the first respondent herein, 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 claimant/first respondent herein 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.

4. Thiru.Ganesan, the 1st respondent herein through his natural guardian and next friend filed M.C.O.P.No.1824 of 2004 claiming compensation of Rs.4,00,000/- jointly and severally against the owner of the canter van, 2nd respondent herein and its insurer the appellant herein.

5. 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 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. The Insurance Company has to exonerated from any liability.

6. Before the Tribunal, on behalf of the claimant 2 witnesses and 12 Exhibits were marked. On behalf of the Insurance Company/2nd respondent 2 witnesses and 5 Exhibits were marked. Ex.X-1 to Ex.X-4 are the records from R.T.O. Office marked through R.W-1.

7. The Tribunal, on considering the evidence placed before it, held that the claimant is a third party. The driver of the offending van had no valid driving license at the time of accident. The driving license expired on 31.08.2007 and not renewed thereafter. The claimant as a cattle broker accompanied the owner of the cattle along with the cattle. Hence, he has to be considered as authorised passenger. Therefore, awarded a sum of Rs.2,25,200/- 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.

8. 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. Section 147 of the Motor Vehicles Act not statutorily require the Insurance Company to cover the liability of the passengers travelling in the goods vehicle. The claimant is neither the owner of the goods nor his representative. In the F.I.R given by Sethu the owner of the

goods, the claimant Ganesan was a known person to him, who accompanied him in the van. Therefore, the claimant cannot be treated as third party or a authorised passenger. 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.

9. Heard the Learned Counsel for the appellant.

10. As per F.I.R given by Sethu, 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. 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. This issue has to resolved based on the insurance policy terms and conditions.

11. 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.

12. The Tribunal, on considering the premium collected and the coverage offered had held that the claimant being a cattle broker by profession and had travelled along with the owner of the goods after purchasing the buffaloes has to be treated as authorised passenger. Apart from the driver, only two passengers were travelling along with the goods. Since, the Insurance Company has collected premium for two employee and also covers third party risk, it is liable to pay. Also, taking note of the fact that, the accident occurred on 27.08.2004, the driving license of the driver which expired on 24.07.2003 as per Ex.X.2, got renewed only on 01.09.2004 as per Ex.X.3 proves that on the date of accident the driver had no valid license to drive. Therefore, for violation of policy condition, the insurer is entitled to recover from the insurer after payment to the claimant.

13. No doubt, the claimant is not the owner of the goods and he is not the employee of the insured. But then, the Insurance Company has collected premium of Rs.50/- under WC to 2 employee and Rs.333/- for loading risk. The claimant through evidence had proved that, he is a cattle broker and after the injury sustained on the head in the accident, he had lost his faculty to understand and also lost his earning capacity. In the cross examination of R.W.2, he admits that there were only two claim

petitions in connection with the said accident. One by the owner of the goods (M.C.O.P.No.120 of 2005) and another (M.C.O.P.No.1824 of 2004) by this claimant, who accompanied the owner. Considering these facts, this Court holds that, the insurer cannot be totally absolved from its liability. The Tribunal, ordered to pay the compensation and recover from the vehicle owner is sustainable.

14. From the records, this Court finds that the claim petition was dismissed for default on 27.01.2010 and on petition, got restored to file as per order in I.A.No.1183 of 2011 dated 27.07.2012. For the default period between 27.01.2010 to 27.07.2012, the claimant is not entitled for interest. Hence, with the modification in respect of computation of interest period, the Appeal is disposed of as under:-

15. The compensation of Rs.2,25,200/- with 7.5% interest from the date of numbering the petition (02.12.2004) till the date of realisation excluding the period of default (i.e.,27.01.2010 to 27.07.2012)shall be deposited by the appellant herein/2nd respondent in M.C.O.P.No.1824 of 2004 within a period of 8 weeks from the date of receipt of this judgment. On such deposit, the 1st respondent herein/claimant shall be entitled to withdraw the same on filing appropriate application.

16. Accordingly, the Civil Miscellaneous Appeal is partly-allowed . No order as to costs.

Sd/-
Assistant Registrar

//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.1461 of 2015

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