

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1504 of 2015

And

M.P.Nos.1 of 2015 and 15856 of 2016

M/s.Bharti AXA General Insurance Co. Ltd.,
Doddaanekundi,
Outer Ring Road
Bangalore-560 037.

.... Appellant/3rd Respondent

vs.

1.Narasimman 1st Respondent /Petitioner
2.K.Suresh 2nd Respondent/1st Respondent
3.C.Shankaran 3rd Respondent/2nd Respondent

The Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2015 passed in M.C.O.P. No.2596 of 2013 on the file of the Special Subordinate Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Krishnagiri.

For Appellants : Mr.S.Arun Kumar

For Respondent-1 : Mr.Mukund R.Pandiyan

For Respondents-2&3 : set ex parte in Lower Court.

J U D G M E N T

The Civil Miscellaneous Appeal on hand is filed against the judgment and decree dated 27.02.2015 passed by the learned Special Sub-Judge, Special Sub-Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P. No.2596 of 2013.

2. The appellant/Insurance Company filed this Civil Miscellaneous Appeal mainly on the ground that the gratuitous passengers have filed a claim petition and the Tribunal, while arriving a finding, that they are all unauthorised passengers granted compensation merely on the ground that the policy was in force with the appellant/Insurance Company.

3. The accident occurred on 13.08.2011 at 17.45 hours in Hosur to Krishnagiri N.H. Road near Alagupavi Diversion Road. The Soolagiri Police Station, Krishnagiri District registered a case in Crime No.389 of 2011 under Sections 279 and 337 of IPC.

4. Admittedly, the vehicle involved in the accident is Tata Ace vehicle bearing temporary Registration No.TN-30-AL.T-3173, which was from Soolagiri to his house along with timber and wooden blocks.

5. The Trial Court adjudicated the issues with reference to the documents and the evidences.

6. The following issues were framed by the Tribunal:-

"(1) Whether the accident took place due to the rash and negligent driving of the driver of the first respondent vehicle ?

(2) Whether the respondents are liable to pay the compensation. If so, what is the quantum of compensation the petitioner is entitled to ?

7. With reference to Point No.1, the Trial Court arrived at a conclusion that the respondents have not examined any evidences and marked any documents and considering the F.I.R Ex.P-1 and the evidence of PW-1 could arrive at a conclusion that the accident had occurred due to the rash and negligent riding of the rider of the second respondent vehicle.

8. With reference to Point No.2, the Tribunal made a finding that as per the Registration Certificate of the abovesaid offending vehicle, during the course of cross-examination, it was admitted that the offending vehicle was insured with the appellant/ Insurance Company at the time of accident. RW-2 one Mr.R.Pradeep Kumar, Legal Officer of the appellant-Insurance Company was examined and he has filed the proof affidavit before the Tribunal. In the said proof affidavit, he has stated that the first respondent had allowed the petitioner along with fourteen other persons to travel in Tata Ace vehicle, which was insured with the appellant/Insurance Company and therefore, all those passengers are unauthorised passengers. The vehicle met with an accident is a goods carrier and the sitting capacity in the said goods carrier vehicle is only two as per Registration Certificate. Thus, the first

respondent had violated policy condition. The first respondent-vehicle was charged for the offence under Section 62(1) read with Section 192 of the Motor Vehicles Act, 1988, for carrying passengers in violation of permit and the copy of the policy was marked as Ex.R-2 and the charge sheet was marked as Ex.R-3.

9. Though the Tribunal arrived a finding with reference to the fact that the vehicle which met with an accident is a goods carrier and more specifically, Tata Ace vehicle, wherein there is no permit to carry the passengers, the passengers were also gratuitous passengers, then granted the compensation only on the ground that the vehicle was insured at the time of accident and therefore, the appellant/ Insurance Company is liable to pay compensation.

10. Mere policy is insufficient to grant compensation. The conditions of the policy are also to be considered by the Tribunal. The nature of the policy i.e., contract, terms and conditions as well as the rights and the liabilities agreed between the parties are to be considered for the purpose of granting compensation. The Tribunal has granted compensation merely on the ground that the vehicle was insured at the time of accident and therefore, the passengers who succumbed to injuries are entitled for compensation.

11. Undoubtedly, such an approach is not in consonance with the legal principles. Admittedly, the vehicle which met with an accident is Tata Ace, which is a goods carrier, wherein the passengers cannot be allowed to travel and there is no permit. Thus, all those passengers, who travelled at that point of time, are gratuitous passengers and therefore, there is no coverage under the policy by the appellant/Insurance Company.

12. In support of the grounds raised in the present Civil Miscellaneous Appeal, the learned counsel for the appellant cited a judgment of the Hon'ble Division Bench of this Court in the case of Bharati AXA General Insurance Company Ltd vs. Aandi and two others [2018 (2) TN MAC 731 (DB)], wherein in paragraph-15, the Hon'ble Division Bench of this Court observed as under:-

"15. While Mr. S. Arunkumar, learned counsel appearing for the Insurance Company would contend that the doctrine of pay and recover evolved by the Courts in National Insurance Company Ltd. vs. Swaran Singh reported in (2004) 3 SCC 297, would

apply only to cases where there is a subsisting contract of Insurance covering the risk and there is a violation of a certain condition in the contract of insurance and not to cases where there is no contract covering the risk."

13. Considering all these facts and circumstances, admittedly, the vehicle which met with an accident is a goods carrier and admittedly, there is no permit to carry passengers. Thus, all the passengers are to be construed as gratuitous passengers and the Tribunal also recorded the said findings and travelling beyond the scope of the policy, the Tribunal granted compensation merely on the ground that the policy was in existence at the time of accident. Thus, the Tribunal has committed an error, which is vital and certainly not in consonance with the policy conditions and the principles to be followed.

14. In view of the fact that the appellant/Insurance Company cannot be held liable to pay compensation and the accident occurred is admitted and the injuries sustained are also established, the respondent claimants are entitled for the compensation awarded by the Tribunal against the owner of the vehicle Mr.C.Shankaran/third respondent. Thus, the respondent claimants are entitled to enforce the judgment and decree dated 27.02.2015 passed by the learned Special Sub-Judge, Special Sub-Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P. No.2596 of 2013 against the owner of the vehicle Mr.C.Shankaran/third respondent by initiating appropriate action. As far as the appellant/Insurance Company is concerned, they are exonerated.

15. Accordingly, the judgment and decree dated 27.02.2015 passed by the learned Special Sub-Judge, Special Sub-Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P. No.2596 of 2013 stands set aside in respect of the appellant/Insurance Company is concerned and consequently, C.M.A.No.1504 of 2015 stands allowed. However, there shall be no order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The Special Subordinate Judge,
Special Sub-Court-cum-Motor Accidents Claims Tribunal,
Krishnagiri.

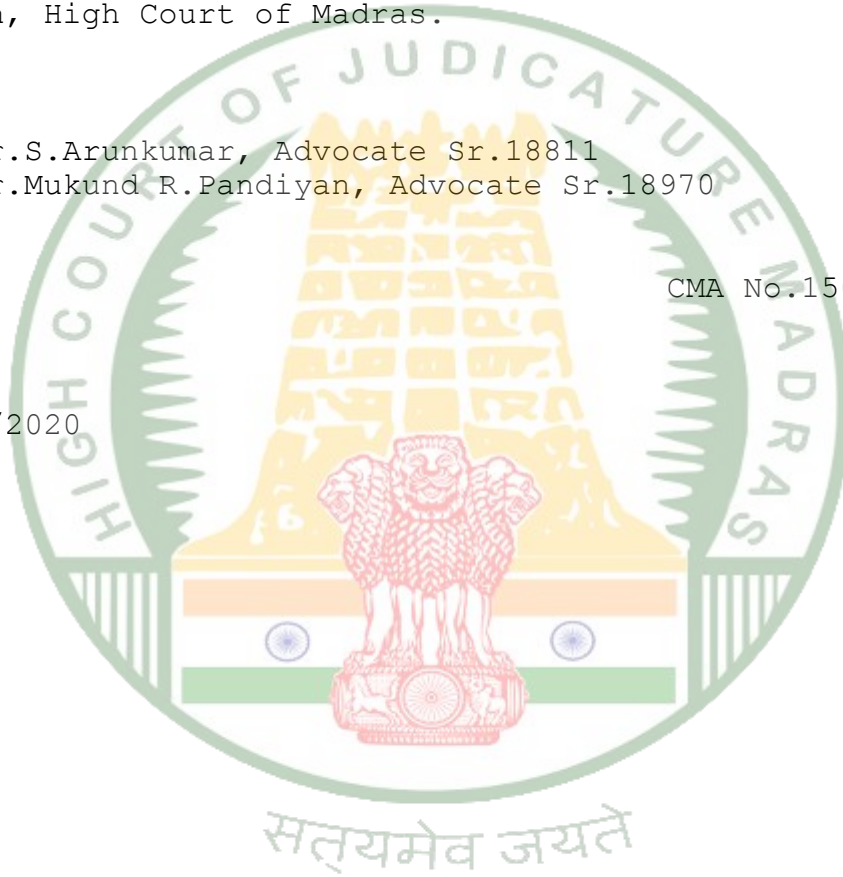
Copy to

The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.S.Arunkumar, Advocate Sr.18811
+1cc to Mr.Mukund R.Pandiyar, Advocate Sr.18970

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