IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1541 of 2015

Lurthuselvaraj ..Appellant/Petitioners

Vs.

1.Thirumoorthy

2.Cholamandalam MS General Insurance Company Limited,
N.S.C.Bose Road,
Chennai-1. ..Respondents/Respondents
(R1 was set ex-parte in the trial Court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 05.12.2012 made in M.C.O.P.No.226 of 2011, on the file of the Motor Vehicle Accidents Claims Tribunal III, Small Causes Court, Chennai.

For Petitioner : Mr.A.Subadra
for M/s.C.Munusamy

For Respondents : M/s.C.Harini
for M/s.N.Vijayaraghavan for R2
R1-Ex-parte

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 05.12.2012 passed in M.C.O.P.No.226 of 2011 on the file of the III Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

2. The accident occurred on 31.07.2009 at about 21.45 hrs while the petitioner was traveling as owner of goods in an auto bearing Regn.No.TN-07-AK-7092 from Choolaimedu to Adyar near Bia Tower. At that time, the driver of the above auto drove the vehicle in a rash and negligent manner and dashed against the centre median and as a result, the auto capsized. The petitioner sustained grievous injuries. The driver of the auto is responsible for the accident. The first respondent is the owner and the 2nd respondent is the Insurance Company. They are jointly and severally liable to pay compensation.

3. The Insurance Company disputed the claim petition mainly on the ground that at the time of accident, five persons were traveling in the goods auto. The permit for the auto, as per the Registration Certificate, is only driver plus one. Therefore, the claimant is an unauthorized passenger and accordingly, the Insurance Company cannot be held liable. When unauthorized passengers are permitted in a goods vehicle, they are violating the policy conditions and the Insurance Company cannot be held liable to pay compensation. Even in the FIR, it is stated that several persons were traveling in the vehicle, at the time of accident. All such persons cannot be treated as passengers in the goods vehicle and there is no coverage for all such unauthorized persons. Therefore, the Tribunal has rightly rejected to fix the liability on the Insurance Company and rightly awarded the compensation to be paid by the owner of the vehicle.

4. The learned counsel appearing on behalf of the appellant mainly contended that he was traveling as a load man for the purpose of loading and unloading goods. However, such a statement is in contradiction to the claim petition itself. In the claim petition, the claimant has stated that he was aged about 55 years, at the time of accident and he was a head cook. He cannot subsequently say before the Court that he was traveling as a load man to load and unload the goods from the goods auto.

5. This Court is of the considered opinion that Ex.P1/FIR states that "நானும் முன்னாடி சிறு பையன், எங்கள் முதலாளி, சுமையல்காரர் லூர்து செல்வராஜ் வயது 85 அவரையும் டிரைவர் மூர்த்தி ஆகியோரும் வண்டியின் முன் உட்கார்ந்து கொண்டு அடையார் செல்வதற்காக". Thus, it is evident that at the time of accident, five persons were travelling in the goods auto and as per the policy, only driver and cleaner were allowed to travel and they are covered under the policy. The claimant in the present case could not able to prove that he was a cleaner sitting along with the driver.

6. Even assuming that if the claimant was traveling for the purpose of loading and unloading goods, unauthorized passengers cannot be permitted for loading and unloading goods. The vehicle involved in the accident itself is a goods auto.

7. Courts cannot encourage such unauthorized traveling by the passengers. In the event of encouraging such unauthorized travel, then it would give a wrong message to the public at large. Therefore, the Courts must adopt a pragmatic approach to ensure that the people at large are following the rules and regulations as well as traffic rules scrupulously to ensure their safety as well as safety of the other road users also.

8. By encouraging such unauthorized travel by the gratuitous passengers, the Courts are not only diluting the law but encouraging such persons by awarding compensation. Traffic violations are increasing day to day in our great nation. Some people have no respect towards traffic regulations and the rules. It is not only their safety but also the rights of all other common men who are all using roads to be protected. In the event of allowing such irregularity or illegality, then the Authorities are infringing the rights of all other rightful road users who are all driving their vehicle or travelling in a vehicle as per the rules and regulations. Therefore, while considering the liability, the Courts are expected to be cautious and find out whether there is a coverage policy or passengers are unauthorized or in few cases, in the case of third party, pay and recovery is ordered or not?. If there is no coverage, then the Courts would not grant compensation.

9. Policy is a contract. The parties are bound by contractual obligation. In the event of violation of such contractual obligation, either of the party is not liable to pay compensation to the victim. In the event of violation of the terms and conditions of the contract, then the Courts would not grant compensation in favour of the claimant and in the event of granting compensation, it will give a wrong message to the public at large. If they have followed the rules and regulations and the terms and conditions, then they can get compensation from the Tribunal. Therefore, it is not as if the compensation is to be awarded on certain misplaced sympathy. The compensation is to be awarded with the terms and conditions of the contract so as to ensure that the traffic rules as well as the permit granted are followed scrupulously by all concerned. Road safety is also a right of all the citizens. The violators are to be prosecuted. Violations are to be viewed seriously, then alone, it may be possible to reduce such violations or irregularities or illegalities and in the event of liberal approach in settlement of compensation, then it will lead to encouragement to the violators.

10. In the present case, five persons were traveling in a goods auto. The claimant himself admitted in the claim petition that he was a Head Cook. Thus, he cannot travel in a goods auto as load man and therefore, he is an unauthorized passenger. The Tribunal has rightly taken a view that the owner alone is liable to pay compensation and not the Insurance Company. It is not as if the right of compensation is denied in this case. The compensation is awarded by the Tribunal, however, the liability is fixed on the owner of the vehicle. In all such cases, it would be perfect to not award the compensation against the Insurance Company and the owner should be held responsible, then alone, such violations can be averted. Thus, the Tribunal

directed the owner of the vehicle to pay the compensation and this Court do not find any perversity or infirmity in respect of judgment passed in this regard. Accordingly, the appellant is permitted to file an execution petition against the owner of the vehicle to recover the damages by following the procedures contemplated. Thus, the judgment and decree dated 05.12.2012 in M.C.O.P.No.226 of 2011 is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Ssb

To

The Motor Vehicle Accidents Claims Tribunal,
Small Causes Court, Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.23777
+1cc to Mr.C.Munusamy, Advocate, S.R.No. 22928

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PPA(CO)
GN(19/07/2021)