IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1667 of 2013
and
M.P.No.01 of 2013

The Branch Manager,
The Oriental Insurance Co.Ltd.,
No.75, Krishnan Street,
Tiruvannamalai. .. Appellant/2nd Respondent

Vs.

1.Chellammal
2.Vimala Rani
3.Gomathi
4.Kalidas
5.Jeyapradha ..1 to 5 Respondent/Petitioner
6.S.Santhakumar ..6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2012 made in M.C.O.P.No.868 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Tindivanam.

For Appellant : Mr.E.Rajadurai

For R2 to R5 : B.Gurunathan

For R6 : Mr.T.Dhanasekaran

J U D G M E N T

The Branch Manager, The Oriental Insurance Company Limited, Thiruvannamalai has filed the present appeal against the award dated 27.09.2012 passed in M.C.O.P.No.868 of 2007 by the Principal Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Tindivanam.

2. On 15.08.2007 at about 06.00 PM., the deceased was travelling in the first 6th respondent's lorry bearing Regn.No.TN31U2509 along with the relatives from Vizhukkam to

Gingee on the Tindivanam to Gingee road. When the lorry was proceeding near Vadavanur, he suddenly applied the break. As a result, the vehicle capsized and the deceased and two other relatives sustained fatal injuries.

3. The Tribunal held that the driver of the lorry was responsible for the accident and directed both the owner of the lorry and the Insurance Company (appellant herein) to jointly and severally pay the award amount of Rs.5,75,000/- to the claimants.

4. Mr.Rajadurai,learned counsel for the appellant relied on the decision in C.Pinniammal Vs.Jakkammal and others reported in CDJ 2017 MHC 8075 and contended that since the deceased and his relatives were travelling as unauthorized passengers in the insured vehicle, which doest not cover under Section 147 of MV Act read with the policy Ex.R1, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation.

5. Per contra, Mr.B.Gurunathan, learned counsel appearing for the respondents 1 to 7 relied on the decision in Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited reported in 2018 (1) TN MAC 435 (SC) and contended that since the deceased had travelled along with his relatives in the lorry at the time of accident, the insurer would be obliged to satisfy the compensation amount awarded to the claimants.

6. In United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods "within the permitted seating capacity", the Insurance Company would not be held liable to pay compensation."

7. Section 147 of the Motor Vehicles Act enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are (i) the policy must specify the persons or class of persons, who are insured with respect to their liability to third parties (ii) the policy must specify the extent of liability which must extend to the extent specified in sub Section 2 of Section 147 and (iii) the liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of use of the vehicle in a public place. In fact, Section 147(1)(b)(i) was amended with effect from 14.01.1994 and it includes the owner of the goods or unauthorized passengers or his authorised representative carried in the vehicle".

8. An Insurance Company, which faces a claim petition, can raise a statutory defence that the vehicle was used for a purpose other than the purpose for which it is intended, in order to avoid its liability. This is one of the defences available to the insurer under Section 149(2)(a)(i)(c) of the Motor Vehicles Act.

9. In the instant case, the deceased admittedly travelled in the lorry as unauthorised passenger and definitely, he will not be covered under the policy. The gratuitous passengers are not permitted to travel in the goods carriage vehicle.

10. In the decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

> 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. National Insurance 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 compensation and giving it the liberty to recover the same from the owner.
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> 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.

11. It is seen that the Tribunal has directed the Insurance Company to pay the award amount to the claimants. In view of the findings rendered above and also taking into consideration the Judgement cited supra, this Court comes to the conclusion that the Tribunal erred in directing the Insurance Company to pay the compensation. Accordingly, the appellant-Insurance Company is exonerated from paying the award amount to the claimants and the claimants are at liberty to recover the compensation from the owner of the vehicle.

12. In the result,

(i) The appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(ii) The award amount of Rs.5,75,000/-, passed by the trial court shall be paid by the owner of the lorry.

(iii) The appellant/Insurance Company is entitled to withdraw the amount, if already deposited by them.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Tindivanam.

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

+1cc to Mr.T.Dhanasekaran, Advocate SR.No.10158

+1cc to Mr.N.Vijaya Raghavan, Advocate SR.No.9625

C.M.A.No.1667 of 2013
and
M.P.No.01 of 2013

CA(CO)
GMY(26/04/2021)