IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE MRS JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NOS.2085 & 2086 OF 2013

In CMA.No.2085 of 2013

The New India Assurance Company Ltd.,
No.19-A, Bypass Road,
Dharmapuri-1.
(Insurer of the Tractor) ...Appellant / 4th Respondent

Vs.

1.Selvam ...1st Respondent / Petitioner

2.Rajavel ...2nd Respondent / 1st Respondent

3.National Insurance Co. Ltd.,
II Floor, 81-D, Chetty Street,
Opposite Bus stand,
Tiruchengodu,
Namakkal, Tamil Nadu.
(Insurer of the Lorry) ...3rd Respondent / 2nd Respondent

4.Mohammedjan
(Owner of the Tractor) ...4th Respondent / 3rd Respondent

In CMA.No.2086 of 2013

The New India Assurance Company Ltd.,
No.19-A, Bypass Road,
Dharmapuri-1.
(Insurer of the Tractor) ...Appellant / 4th Respondent

Vs.

1.Gopal ...1st Respondent / Petitioner

2.Rajavel ...2nd Respondent / 1st Respondent

3.National Insurance Co. Ltd.,
II Floor, 81-D, Chetty Street,
Opposite Bus stand,
Tiruchengodu,
Namakkal, Tamil Nadu.
(Insurer of the Lorry) ...3rd Respondent / 2nd Respondent

4.Mohammedjan
(Owner of the Tractor) ...4th Respondent / 3rd Respondent

PRAYER in CMA.No.2085 of 2013 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court), Dharmapuri in M.C.O.P.No.438 of 2008 dated 21.12.2011.

PRAYER in CMA.No.2086 of 2013 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court), Dharmapuri in M.C.O.P.No.145 of 2008 dated 21.12.2011.

For Appellant : Mr.C.Ramesh Babu in both Appeals

For Respondent No.3 : Mrs.N.B.Surekha in both Appeals

R2 & R4 : No appearance in both Appeals

COMMON JUDGMENT

Challenging the award passed by the learned Additional District Judge, Fast Track Court, Dharmapuri in MCOP.Nos.438 & 145 of 2008 dated 21.12.2011 respectively, the present appeals have been preferred by the appellant/New India Assurance Company in regard to liability.

2.The brief facts of the case is as follows:

a)On 09.10.2006 at about 1.30 p.m., the claimants namely, Gopal and Selvam travelled in the compressor Tractor bearing Registration No.TCE-8748 which was insured with the appellant herein. When the tractor was proceeding near Andulur Gate Petrol Bunk, a lorry bearing registration No.KA-01-AA5003 driven by its driver dashed against the tractor, due to which, the tractor was capsized, causing grievous injuries to Gopal and Selvam.

b)The Tribunal after analysing the oral and documentary evidence held that the accident had occurred only due to the rash and negligent act of the driver of the tractor who overtook the parked vehicle and causing grievous injuries to the claimant. Since the tractor was insured with the appellant herein, the Tribunal directed both the Insurance Company as well as the owner of the tractor, jointly and severally to pay the compensation to the claimants.

3.Aggrieved against the order passed by the Tribunal, the New India Assurance Company has preferred both the aforesaid appeals questioning the liability.

4.Heard Mr.Ramesh Babu, learned counsel for the appellant/New India Assurance Company and Mrs.N.B.Sureka, learned counsel appearing on behalf of the third respondent/National Insurance Company.

5.The learned counsel for the appellant/New India Assurance Company submitted that Tribunal had erroneously fixed the liability on the Insurance Company along with the insured, who had violated the terms and conditions of the policy, as the insurer is only to compensate the insured towards the risk of third party and not any gratuitous passenger who travelled in the tractor other than the driver. He further contended that the witnesses RW1 to RW3 clearly established that the risk of the claimants was neither required to be covered under the statute nor the policy covered risk of any person carried on the tractor.

6.It is the submission of the learned counsel for the appellant that EX.R4/registration certificate and Ex.R5/insurance policy evidences that there was only one seat provided for the driver in the tractor and also that there is no permit for carrying any other persons in the tractor.

7.The learned counsel submitted that as per FIR, five persons have travelled as unauthorized passengers and the Court below has fixed the liability on the appellant without taking into account that five persons including the driver of the tractor had not went even went for any work but they have gone to attend some function.

8.I have given careful consideration to the submissions made by the learned counsel for the appellant.

9.As regards liability, the Tribunal had directed the owner of the tractor as well as the insurer to pay the compensation jointly and severally to the claimants which is contrary to the well settled proposition laid down by the Hon'ble Division Bench of this Court in Bharati AXA General Insurance Co. Ltd., rep. by its Manager, 1st Floor, Fems Icon, Survey No.28, Doddannakundi, K.R.Puram Obli, Bangalore-560 037 V. Aandi, Rajendran & P.Saravanan reported in 2018 (2) TNMAC 731 (DB) in view of the Larger Bench decisions in New India Assurance Co. Ltd., V. Asha Rani & others and National Insurance Co. Ltd., V. Baljit Kaur and others. In the aforesaid decision, this Court has held that no mandatory requirement for insurer to cover persons travelling as passengers in Goods vehicle, unless such passenger is owner or agents of owner of goods accompanying goods in vehicle. In absence of any statutory requirement to cover liability in respect of passenger in Goods Vehicle, principle of Pay and Recover as statutorily recognized in Section 149(4) & (5), is not applicable ipso facto as held by the Hon'ble Apex Court in Shivaraj's case (stated supra) in view of the Larger Bench decisions (stated supra). The relevant portions of the said judgment are extracted as follows:

> “47. However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41 cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.
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> 48. Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.
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> 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.

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.

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.”

The aforesaid extract is self explanatory to the effect that the Insurance Company is not liable to pay the compensation.

10.Considering the submissions made by the learned counsel for the appellant/New India Assurance Company and in the light of the decision of the Hon'ble Division Bench of this Court in Bharati AXA General Insurance Co. Ltd., (stated supra), this Court is not in consonance with the order passed by the Tribunal in MCOP.Nos.438 & 145 of 2008 dated 21.12.2011, directing the appellant to pay the compensation along with the owner of the tractor and hence, inclined to exonerate the liability fastened on the appellant. Accordingly, the appellant/New India Assurance Company is not liable to pay the compensation to the claimants as directed by the Tribunal and it is only the owner of the Tractor has to pay the compensation to the claimants.

11.In view of the reasons stated, the Civil Miscellaneous Appeals stand allowed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

DP

To

1.The Additional District Judge,
The Motor Accident Claims Tribunal,
Fast Track Court, Dharmapuri.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.N.B.Sureksh, Advocate. SR.No.10234

+1cc to Mr.C.Ramesh Babu, Advocate. SR.No.10356

+1cc to Mr.C.Ramesh Babu, Advocate. SR.No.10355

C.M.A.Nos.2085 & 2086 of 2013

RR(CO)
RVM(03/09/2021)