IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2278 of 2013

IFFCO TOKIO General Insurance Co., Ltd
TULSI Chambers, 3rd Floor,
195, T.V. Swamy Road(W),
R.S.Puram, Coimbatore. .. Appellant/2nd Respondent

Vs.

1.Vijayakumar
2.Rajkumar ....1 & 2 Respondents/Petitioners
3.A. Sivakumar ...3rd Respondent/1st Responden

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment & Decree made in M.C.O.P.No. 15 of 2010, dated 05.01.2013 on the file of the Motor Accidents claims Tribunal, Subordinate Judge, Mettur.

For Appellant : Mr.B. Rajadurai
for Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the Award and Decree dated 05.01.2013 made in M.C.O.P.No. 15 of 2010, on the file of the Motor Accidents claims Tribunal, Subordinate Judge, Mettur in and by which the claim petition filed by the Respondents 1 to 3, seeking compensation for the death of the deceased Chitthan, who was the father of the first and second respondents.

2.The present appeal is filed by the Insurance Company questioning the compensation amount to the claimants.

3.For the purpose of disposal of this Appeal, facts which are germane and necessary are as under:

The respondents are the legal heirs of the deceased Chitthan. They have filed the claim petition before the Tribunal contending that on 26.08.2007 while the deceased Chithan was proceeding in a mini auto bearing Registration No.TN-36-H-1744 the driver of the auto drove the same in a rash and negligent manner. Due to the impact the auto was capsized and the said

Chitthan sustained grievous injuries and died on the spot itself. On the death of the deceased, the respondents herein have filed the claim petition seeking compensation of Rs.20,00,000/-.

4.Before the Tribunal, the claim petition by the Claimants/ Respondents was resisted by the Insurance Company by filing a detailed counter statement. According to the Insurance Company, since the deceased was a passenger in the goods vehicle and 18 persons have travelled along with cooking materials and goods in the minidoor auto. They would further state that in the mini door auto, the driver of the vehicle, one K.Sivakumar, had over loaded his vehicle with 18 persons along with goods and thus caused the accident. Moreover, the policy does not cover gratuitous passenger or unauthorised passenger. Thus, the Insurance Company sought for dismissal of the claim petition.

5.Before the Tribunal, in order to prove the averments contained in the claim petition, the first respondent herein, who is the son of the deceased, was examined as PW.1 and the mother of the deceased was examined as P.W.2. On behalf of the appellant/Insurance Company one Mr.Senthilkumar was examined as RW.1 and one Mrs. Annakodi, Assistant in R.T.O office was examined.

6.In view of the stand taken by the Insurance Company specifically questioning their liability to pay the compensation amount, the Tribunal formulated the following questions:

1.On whose negligence the accident has taken place?

2. Whether the claimants are entitled to receive compensation from the appellant/Insurance company?

3. If so for how much amount can be arrived as compensation?

After examining the witnesses and the materials adduced before the Tribunal, the learned Judge arrived at a conclusion that the Insurance is not responsible to indemnify the claimants, as the alleged vehicle involved in the accident is a goods auto and the Insurance Company shall pay the compensation and recover from the owner of the vehicle. Aggrieved by the same the Insurance company has come forward with this appeal.

7.The learned counsel appearing for the appellant/Insurance company submitted that R.W.1, who is the official of the Insurance Company deposed that the driver of the auto violated the policy conditions by permitting passengers to travel in the auto, which is meant for goods carriage. The deposition of R.W.1 corroborates with R.W.2. He would further contend that the Tribunal ought not to have allowed pay and recovery rights but the Tribunal ought to have directed the respondents to proceed against the owner of the vehicle.

8.Despite serving notice and name printed in the cause list, there is no representation for the first respondent. Hence, the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the first respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10. With regard to negligence aspect, Ex.P.4/Charge Sheet was filed against the driver of the auto and Ex.P.3/Motor Vehicle Inspector's report reveals the fact that the negligent on the part of the driver of the auto is the cause for the accident. Hence, the Tribunal concluded that the negligent driving of the driver of the auto is the cause for the accident.

11.With regard to quantum, considering the avocation of the injured Rs.3,500/- was taken as monthly income and thereby annual income was calculated at Rs.42,000/-(Rs.3,500 x 12) and considering the age(35) of the deceased, proper multiplier to be adopted is '17' and thereby quantified Rs.7,14,000/- (Rs.42,000 x 17) as compensation and deducting 1/3rd (Rs.7,14,000 x 1/3) towards his personal expenses Rs.4,76,000/-(Rs.7,14,000- Rs.2,38,000/-) was awarded towards the head loss of income. The claimants have lost their loveable mother, hence Rs.10,000/- was awarded towards the head love and affection and Rs.5,000/- towards funeral expenses and Rs.5,000/- each was granted towards the head mental agony and Frustration. Thus, the total compensation was quantified as Rs.Rs.4,96,000/- which is hereby tabulated:

S.No.	Particulars	Amount awarded by the Tribunal
1	Loss of income	Rs.4,76,000/-
2	Love and affection	Rs.10,000/-
2	Funeral expenses	Rs.5,000/-
3	Mental Agony and Frustration	Rs.5,000/-
	Total	Rs.4,96,000/-

12.The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words “any person” occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. By taking note of the various Judgments of the Hon'ble Supreme Court and the Judgement of Division Bench of this Court in the case of Bharati AXA General Insurance Co. Ltd., Vs. Anandi and others in C.M.A.Nos. 1529 to 1533 of 2015 dated 24.10.2018 it was held that the direction given by the Tribunal to the Insurance Company to pay the compensation and recover from the owner of the vehicle, is not correct and ordered to proceed against the owner of the vehicle and exonerated the Insurance Company from the liability.

13.It is no doubt true that in many cases the claimants may not be able to realise the award amount from the owner of the vehicle involved in the accident, the said factual position alone cannot impel this Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

14. In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the deceased is an unauthorised passenger. But the Tribunal has ordered to pay the compensation amount to the claimants and then recover the same from the owner of the vehicle, which is not correct. Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants and the claimants can proceed against the owner of the vehicle.

15.In the light of the above observations, this Court is of the considered view that the Tribunal ought to have exonerated the Insurance Company from paying compensation, which erroneously was not granted.

16. In the result, the appeal is allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in this appeal is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, connected miscellaneous petition is closed.

17. If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To
1.The Sub Judge cum Motor Accidents Claims Tribunal,
Mettur.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.16916

C.M.A.No.2278 of 2013

CA(CO)
CB(16/08/2021)