



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.09.2020

Pronounced on: 29.09.2020

Coram::

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.Nos.2682 of 2015 and 2754 of 2016 and
M.P.No.1 of 2015

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
No.15/16, Prince Towers,
College Road,
Nungambakkam, Chennai ... Appellant in C.M.A.No.2682 of 2015
and 2nd Respondent in CMA No.2754 of 2016

K.Selvam ... Appellant/Claimant in C.M.A.No.2754 of 2016
and 1st Respondent in CMA No.2682/15
/versus/

1.Munisekhar naidu ...2nd Respondent in CMA No.2682 of 2015
and 1st Respondent in CMA No.2754 of 2016

2.K.B.Theerthagiri ...3rd Respondent/3rd Respondent
(in both CMA's)

3.The Manager,
National Insurance Co. Ltd.,
No.66, Grems Road,
Chennai - 6. ...4th Respondent/4th Respondent in both CMAs

Common Prayer: Civil Miscellaneous Appeals are filed under
Section 173 of the Motor Vehicles Act, 1988, praying against the
award and decree dated 12.12.2014 made in M.C.O.P.No.51 of 2010
on the file of the Motor Accident Claims Tribunal, Subordinate
Judge, Tiruttani.

In C.M.A.No.2682 of 2015:-

For Appellant : Mr.S.Arunkumar

For R1 : Mr.A.Ponnuswamy

For RR2 & 3 : No Appearance

For R4 : Mrs.R.Sreevidhya

In C.M.A.No.2754 of 2016:-

For Appellant : Mr.A.Ponnuswamy

For RR1 & 3 : No Appearance

For R2 : Mr.S.Arunkumar

For R4 : Mrs.R.Sreevidhya



COMMON JUDGMENT

(The case has been heard through video conference)

WEB COPY

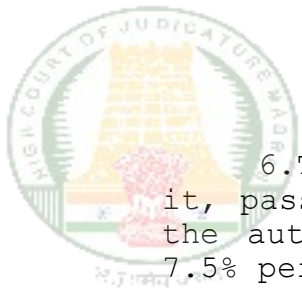
These two appeals are directed against the award of the Motor Accident Claims Tribunal, Tiruthani dated 12/12/2014 passed in MCOP.No.51 of 2010.

2.On 25/11/2007 at about 11.30 am, at Rengiunta - Cuddappa road railway over bridge 'Y' junction, a Eicher mini lorry dashed against the goods delivery auto. The driver of the auto died. The claimant travelling along with the driver sustained injuries.

3.Claim petition filed by the injured for compensation of Rs.4,00,000/- alleging that he was travelling in the goods auto as salesman. He was earning Rs.4,000/- per month in Venkateswara Milk Dairy at Kalahasthi. The accident occurred due to the negligence of the auto driver and the mini lorry driver. Hence, the respondents before the Tribunal are jointly and severely liable to compensate him the loss.

4.In the claim petition, the owner of the auto and its insurer were arrayed as first and second respondents and the owner of the mini lorry and its insurer were arrayed as third and fourth respondents respectively. The insurer of the auto filed counter. It denied liability, stating that the auto insured under them was a goods carrier. As per permit, apart from the Driver no one else is permitted to travel in the goods auto. The claim petitioner who occupied the auto as 'salesman' is an unauthorised occupant. Neither the permit of the vehicle nor the insurance terms covers unauthorised passenger. In case of violation of policy condition, the Insurer is not liable to pay. The Police on investigation, filed FIR against the auto driver for his rash and negligent driving and without driving license. Later, final report was filed as abated due to the death of the auto driver. The compensation claimed is also excessive and no evidence for his income and disability.

5.The insurer of the mini lorry filed counter denying liability for the reason that the accident occurred only due to the negligence of the auto driver. The police has closed the FIR as abated since the Tort-feasor died. When the vehicle insured under them is at no fault, there can be no liability fastened on them.



6.The tribunal after considering the evidence placed before it, passed award against the second respondent / the insurer of the auto to pay compensation of Rs.4,00,000/- with interest @ 7.5% per annum.

WEB COPY

7.Against the said award fixing liability on them, the second respondent in the claim petition is before this court as appellant in CMA.No.2682 of 2016. Not satisfied with the quantum of compensation, the claimant is before this Court as appellant in CMA.No.2754 of 2016.

8.Citing judgments of the Hon'ble Supreme Court and High Courts, the learned counsel for the Insurer of the Auto submitted that in case of fundamental policy violation, the insurer of the Auto is not liable to compensate. Even the principle of "pay and recovery" will not apply in case of violation of permit condition and policy terms. Referring the provisions in section 147 of the Motor Vehicle Act, the learned counsel for the Insurer submitted that, the Registration Certificate of the vehicle marked as EX R-3 would show that the seating capacity of the vehicle is only one. The insurance policy for the vehicle marked as Ex R-4 would show that the insurance is only for the driver and Rs.25/- has been collected as additional premium for the limited liability of operation and maintenance. The claimant is a salesman so not covered under the policy.

9.Regarding quantum, the learned counsel for the Insurer of the Auto submitted that, the claim petition itself for Rs.4,00,000/- and the tribunal has awarded it. In the appeal, the claimant seek for enhancement based on the salary certificate - Ex P-8 and the disability certificate - Ex P-4 which were created for getting higher compensation and not proved to be true.

10.The point for determination in these two appeals is 'whether the injured claimant is entitled to get compensation under the Motor Vehicles Act, and if yes, how much ?' In short, the appeals are in respect of liability as well as quantum.

11.On careful examination of the material facts of the instant case and the catena of judgments relied by the learned counsel on either side, this Court arrive at the following conclusion for the reasons stated hereunder.

12.The investigation by the police taken up based on the FIR (Ex P-1). It concluded fixing the cause of accident on the



deceased driver of the Auto. Ex R-5 the final report indicates that the case was closed as abated. The appellant being the insurer of the Auto, the tribunal has held the appellant liable to pay the compensation. Therefore, it is suffice to examine the terms of contract between the owner of the auto and its insurer in respect of the liability.

13.The claim petition is filed under section 166 of the Motor Vehicles Act. The claimant has pleaded and proved that he was employed as salesman in Venkateswara Milk Dairy owned by Munisekar Naidu. The Registration Certificate (Ex R-3) for the Auto stands in the name of Munisekar Naidu. It is a closed type LMV vehicle with seating capacity -1. The insurance policy - Ex R-4 discloses that the insurance for the auto valid from 17/08/2007 to 16/08/2007. The accident occurred on 15/11/2007. At the time of accident, the auto was not carrying its number plate though it was assigned registration Number AP 03 W 7764. A sum of Rs.4,052/- paid as premium which includes own damage premium of Rs.1950.616, basic third party lliability Rs.1,530/-, PA cover for owner - Driver Rs.100/- and limited liability for operation and maintenance for one person Rs.25/-

14.The requirements of policy and limits of liability is covered under sections 147 and 149 of the Motor Vehicles Act. The provisions relevant for deciding the point under consideration is extracted below:-

147 Requirements of policies and limits of liability. -

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person



WEB COPY

insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

- (a) engaged in driving the vehicle, or
 - (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
 - (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

.....

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

.....

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—

- (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required



WEB COPY

to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) 1[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who



WEB COPY

has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(Rest of the sub sections omitted since, not relevant)

15. As per the claim, the injured is not a third party. He claims to be the employee under the owner of the goods vehicle as salesman. The premium in this case collected to cover third party and limited liability in respect of operation and maintenance subject to IMT (Indian Motor Tarrif) endorsement numbers 7, 21, and 39.

"IMT.7: Relates to vehicles subject to Hypothecation Agreement

IMT. 21 say about, the special exclusions and compulsory deductible. This is applicable to all Commercial Vehicles excluding taxis and motorized two wheelers carrying passengers for hire or reward.

IMT. 39. Deals with the Legal Liability to persons employed in connection with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles. (For GOODS VEHICLE) In consideration of the payment of an additional premium.

This provision reads as : "it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any



WEB COPY

case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured.

Provided always that :- (1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or Group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees. (2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations. (3) the insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at times allow the insurer to inspect such record. (4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed. The premium to be calculated at the rate of Rs25/- per driver and/or cleaner or conductor and/or person employed in loading and/or unloading but not exceeding the number permitted by the Motor Vehicles Act 1988 including driver and cleaner. Subject otherwise to the terms exceptions conditions and limitations of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

16.Thus, from reading of IMT 39 and section 147 of the Motor Vehicles Act along with the insurance policy cover - Ex R-5, it is clear that the premium of Rs.25/- collected under limited liability is for only one person who can either be the driver/cleaner/employed for loading and/or unloading. The claimant as a salesman does not fall under any of these three categories. Therefore, apparently, under statute and under terms of contract, the insurer is not liable to indemnify the insured for the injuries sustained by the unauthorised passenger.

17.The case laws cited as binding precedent and re-enforces the above view of this Court and not anything contrary to it. In The United India Insurance Co. Ltd., vs. Selvi (C.M.A.No.3078 of 2013 dated 03.04.2014), a learned Single Judge of this Court has marshalled various judgments rendered in connection with gratuitous passenger in a goods vehicle and has held that if a



passenger is accommodated in a goods vehicle for a fare as a owner of the goods, the Insurance Company cannot deny the liability. It is emphasized in this judgment that the Insurance Company has to establish that the claimant was an unauthorised passenger nothing to do with the owner of the vehicle or the owner of the goods carrying in the vehicle. When the case of the claimant is that he has been accompanying the goods as the owner of the goods or the representative of the owner and when there is no contra evidence, the Insurance Company is held liable under Section 147 (1) (b) of the Motor Vehicles Act.

18. In this regard, it is also appropriate to refer the judgments of the Hon'ble Supreme Court rendered in National Insurance Co. Ltd., vs. Baljit Kaur (2004 ACJ 428) and in United India Insurance Company Ltd., v. Suresh K.K (2008 (12) SCC 657).

19. In Baljit Kaur case (cited supra), the word "any person" mentioned in Section 147 (1)(b) of the Motor Vehicles Act was explained. Following the said judgment, in Suresh K.K case (cited supra), the Hon'ble Supreme Court has categorically held that it will not include any gratuitous passenger. In Suresh K.K case (cited supra), the Hon'ble Supreme Court has held that if the claimant has not been travelling in the goods vehicle as owner of the goods, he shall not be covered by the policy of the Insurance Company. The relevant portions are extracted below:-

"9. The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner of the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Court is as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act No. 54 of 1994 was to widen the scope of the liability of the insurance company.

10. It is now well settled that the term 'any person' envisaged under the said provision shall not include any gratuitous passenger. [National Insurance Co. Ltd., v.



WEB COPY

Baljit Kaur {(2004) 2 SCC 1}}. If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance, In any view of the matter in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy. "

20. In cases where the vehicle had permit to carry passengers other than the Driver in the goods vehicle, the Courts have directed the Insurer to pay and in case of any violation to recover from the owner. When there is no provision in the vehicle to carry the passenger in the cabin of the vehicle and when there is no additional premium paid for passenger in a goods vehicle, the Court has not fastened the liability on the Insurance Company. Therefore, this Court is of the opinion that the award passed by the Tribunal is contrary to the statute and the terms of the insurance policy.

21. The claimant has stated that he is an employee under Munisekhar naidu - owner of the vehicle. If the claimant satisfies the definition of "workman", it is open for him to work out his remedies under the Workmen Compensation Act before the appropriate forum.

22. In the result, C.M.A.No.2754 of 2016 filed by the claimant is dismissed and C.M.A.No.2682 of 2015 filed by the Insurance Company is allowed and the award passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

jbm



To,

1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Tiruttani.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.32371

+1cc to Mr.Anand AMD Suryas, Advocate SR.No.32094

C.M.A.Nos.2682 of 2015 and 2754 of 2016

JP (CO)
GMY (17/08/2021)