IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.11.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1318 of 2015

M/s.United India Insurance Company Limited,
Arni. ... Appellant/3rd Respondent

/versus/

1. Mr.Manickam,
S/o.Late Raji,

2. Minor. Kalyani,
D/o.Late Raji,

3. Minor. Usha,
D/o.Late. Raji,

4. Minor Prakash,
S/o.Late. Raji,
Minors 2 to 4 represented by their guardian 1st petitioner

Mr.Narayanasamy (deceased),
S/o.Samikkannu,
All are residing at
Alankaramangalam Village,
Polur Taluk, T.V.Malai District.

5. Mr.Narayanan, (Driver),
S/o.Poongavana Gounder,
Konamangalam Village,
Vandhavasi Taluk,
Tiruvannamalai District.

6. Mrs.Bakkiyam, (Owner),
S/o.Ramalingam,
Mettu Theru,
Pazhampettai, Sedhupat,
Polur Taluk, Tiruvannamalai District.
...Respondents/Petitioners 1 to 5/
Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree passed in M.C.O.P.No.72 of 2006 on 11.09.2014 on the file of the Learned Motor Accident Claims Tribunal of Arni at Tiruvannamalai District.

For Appellant : Mr.J.Chandran

For R1 to R4 : Mr.C.Bhargavi,
for M/s.A.K.Mylsamy & Associates

For R5 & R6 : No appearance

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondents.

2. This Appeal is preferred by the Insurance Company challenging the liability as well as quantum awarded by the Tribunal, in the claim petition filed by the respondents 1 to 4 herein.

3. The relevant facts of the case is that, on 26.06.2005, at about 10.00P.M, while Thiru.Raji and others returning in a lorry loaded with jelly bearing registration No.M.S.V.2972. The vehicle capsized, due to rash and negligently of the lorry driver. The jelly loaded in the lorry fell on the passengers who were travelling on the road, in which, Thiru.Raji died out of suffocation and others sustained injury. Alleging that, the accident occurred due to the negligence of lorry driver, a claim petition for Rs.7,00,000/- was laid by the dependants of the deceased Raji against the lorry driver, owner of the lorry and the Insurance Company.

4. The claim petition was resisted by the Insurance Company on the ground that it is a goods vehicle, wherein, 12 persons travelled contrary to the permit and policy conditions. Since there is a breach of essential terms of policy, the Insurance Company is to be observed from any liability and only the owner of the lorry is liable to pay compensation and also the quantum claim was disputed by the Insurance Company.

5. Before the Tribunal, the claimant filed four documents and examined two witnesses. On behalf of the respondent/Insurance Company, two witnesses and 8 documents were marked.

6. The Tribunal holding that the accident had occurred due to negligently of lorry driver and case has been registered against the lorry driver, has held that the Insurance Company which has insured the lorry is liable to pay the compensation and has awarded a sum of Rs.5,42,000/- as compensation with 7.5%.

7. In the appeal, the Learned Counsel appearing for the appellant would canvassed that when 12 persons unauthorisely travelled in a goods vehicle, which is not meant for carrying passengers, clear violation of the policy condition as well as motor vehicle act is established. There cannot be fundamental breach of permit and policy condition by transporting excess passengers in the vehicle meant for transporting goods. While so, the Tribunal ought not to have fasten the liability on the Insurance Company which is not bound to pay or indemnify the vehicle owner who has violated the policy condition. Further, the Learned Counsel would also submit that, it is admitted by the owner of the vehicle in his deposition that the driver of the vehicle had no endorsement to drive heavy vehicle and the photocopy of the Driving licence ought not to have been accepted by the Tribunal to hold that driver had valid driving license.

8. Regarding the quantum of compensation, it is contended by the appellant that when there is no proof for earning capacity of the deceased, the compensation of Rs.4,05,000/- is excessive and exorbitant and also Rs.50,000/- for loss of consortium is contrary to law laid down by the Hon'ble Supreme Court.

9. This Court, without adverting to the other aspects, confines to the point of liability. In a goods vehicle it is proved that 12 persons travelled and the deceased Thiru.Raji is one among them. It is lorry meant for carrying goods and no passengers can travel on the board. The Insurance policy does not covers the risk for passengers and no premium being collected by the Insurance Company. While so, the liability to pay compensation to the deceased persons, shall only be fastened on the owner of the vehicle, who has permitted passengers to travel in the goods vehicle. Hence, the Insurance Company is exonerated from their liability to pay compensation. The claimants, who are the respondents 1 to 4 in this appeal are at liberty to recover the claim amount from the owner of the vehicle (Thiru.Bakkiyam).

10. Accordingly, this Civil Miscellaneous Appeal is Allowed. The Claimants are at liberty to recover the compensation awarded by the Tribunal from the owner of the vehicle. If any amount already deposited by the Insurance Company pursuant to the interim order passed by this Court on 20.07.2015, same shall be withdrawn by the Insurance Company. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

bsm
To
1.The Motor Accident Claims Judge
The Motor Accident Claims Tribunal of Arni
Tiruvannamalai District.

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

+1 CC to Mr.J. Chandran, Advocate sr 36013.

C.M.A.No.1318 of 2015

KK(CO)
SP(31/08/2021)