

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.07.2020
Pronounced On	21.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.531 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

New India Assurance Co. Ltd.,
VRV Complex, II Floor,
Bhavani Main Road,
Perundurai.

... Appellant/5th Respondent

Vs.

1.Mohamudha Fajila

2.Ahamed Hashir

3.Ahamed Hameem

4.Ahamed Hafil

5.K.Abdul Hakeem

6.Mohamuda Bi

: Respondents 1 to 6/Claimants

7.Arivalagan

8.Tamil Nadu State Transport Corporation,
Pudukottai, Rep. by its Managing Director,
Pudukottai.

9.Kandasamy

10.S.Dhasthakeer : Respondents 7 to 10/ Respondents 1 to 4

(RR2 to 4 declared as Major and their mother Mohamudha Fajila discharged for the guardianship vide Court Order dated 08.02.2019 made in C.M.P.Nos.12144 & 12145 of 2016 in C.M.A.No.531 of 2011)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 23.12.2009 made in M.C.O.P.No.837 of 2003, on the file of Motor Accident Claims Tribunal (I Additional District Judge) Erode.

For Appellant : Mr.K.Vinod for
Mr.Elveera Ravindran

For R1 to R6 : Mr.Parthikannan for
Mr.A.K.Kumarasamy

For 7 to 10 : Exparte

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 23.12.2009 passed by the I Additional District Judge of Erode, as a Motor Accidents Claim Tribunal in M.C.O.P.No.837 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.10,03,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit with proportionate costs, to the 1st to 6th respondent/claimants, who are the legal heirs and dependents of the deceased Mohameed Shakir Ali who died in a motor accident. The liability has been equally apportioned on the appellant Insurance Company and the 8th respondent State Transport Corporation.

3. The 2nd to 4th respondents, who are the children of the deceased Mohameed Shakir Ali, have attained the age of majority during the pendency of this Civil Miscellaneous Appeal. Same was recorded vide order dated 08.02.2019 in C.M.P.Nos.12144 and 12145 of 2016 of this Court.

4. The deceased Mohammed Shakir Ali died in a motor accident on 15.05.2003, while travelling in a Van bearing registration No. TN-33-E-0423 driven by the 9th respondent. Though the deceased had earlier owned the insured van, he sold the insured van about 30 days before the accident, i.e. 16.04.2003, to the 10th respondent. However, the insurance policy issued by the appellant insurance company continued to remain in the name of the deceased on the date of the accident.

5. From facts that has been recorded by the Tribunal, it appears that a bus bearing registration No.TN-55-N-0328 driven by the 7th respondent belonging to the 8th respondent State Transport corporation collided with the insured Van which

resulted in the death of the deceased who was seated in the front cabin of the insured Van.

6. It is stated that a herd of sheep was crossing the road and therefore to avoid hitting the sheep both the bus and the insured van swerved and hit each other, as result of which, the deceased who was in the cabin of the insured van suffered grievous injuries and later succumbed to the injuries and died on the way to the hospital.

7. The dependents of the deceased, i.e. 1st to 6th respondents therefore filed a claim petition for compensation under Section 166 of the Act. The Tribunal has awarded the aforesaid compensation.

8. While awarding the aforesaid compensation, the Tribunal has found the 7th and 9th respondents (drivers of both the vehicles) guilty of negligence c for accident and causing the death of the deceased. The Tribunal has therefore apportioned the 50% of the liability on the appellant Insurance Company and the 50% of the liability on the 8th respondent State Transport Corporation.

9. The appellant Insurance Company is aggrieved by the impugned Judgment and decree in as much as the 50% liability has been fixed on it, on the following principle grounds:-

- i. The deceased was travelling in the insured Van as an unauthorised person; He was a gratuitous person and therefore not a third party.
- ii. Though the insured vehicle was sold by the deceased to Mr.S.Dhasthakeer (10th respondent) on 16.04.2003, yet the policy had not been transferred to Mr.S.Dhasthakeer and therefore, the deceased continued to be the owner of the insured van and was not a third party for the purpose of Section 147 of the Act.
- iii. Driver of the insured Van was responsible for the accident and since the deceased was not a third party, liability cannot be fastened on the appellant Insurance Company.

10. It is further submitted that the deceased neither travelled as an employee of the owner of the insured van in the capacity of its driver or its cleaner.

11. It is rather submitted that the deceased travelled as the owner of the insured vehicle and not as a owner of any goods or such owners representative and therefore the Tribunal erred

in apportioning the 50% liability on the appellant insurance company.

12. On behalf of the appellant insurance company, it was further submitted that the insurance policy contained the restrictive clause, which reads as follows:-

Limitation as to use:-

Use only for carriage of goods within the meaning of Motor Vehicles Act, 1988.

The policy does not cover

1. Use for organised racing, pace making, reliability trial or speed testing.

2. Use whilst drawing a trailer except the towing, (other than for reward) of any one disabled mechanically propelled vehicle.

3. Use for carrying passengers in the vehicles except employees (other than the driver) not exceeding the number permitted in the registration document and coming under the purview of Workmen's Compensation Act, 1923.

13. It is therefore submitted that there was limitation on the risk covered in the policy issued for the insured vehicle and therefore the Tribunal erred in apportioning the 50% of the liability on the appellant Insurance Company.

14. It is further submitted that the deceased had neither contracted the vehicle nor travelled in the vehicle as owner of the goods as admittedly no goods had been purchased prior to the accident for which the vehicle was purportedly hired by the deceased.

15. It is further submitted that apart from the deceased, the seven other persons had also travelled in the insured vehicle and therefore, there was a violation of the Act. Under these circumstances, it is submitted that the Tribunal erred in apportion the 50% of the liability on the appellant insurance company.

16. I have considered the arguments advanced by the learned counsel for the appellant and the 1st to 6th respondents/claimants and the evidence on record.

17. It is noticed that the insured vehicle was a "goods carriage vehicle". Though there are limitations as to its use for carrying persons, as per Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, the appellant Insurance Company is required

to cover/risk of the owner of the vehicle in respect of the death or bodily injury to the owner of the goods or his authorised representative apart from its employees who travel in the insured vehicle.

18. The insured vehicle had a seating capacity of 1+2, ie. Driver + two person, as per Ex.P8 Certificate of Registration. The insured van had the seating capacity to carry the deceased. Two persons could be either a cleaner or an employee of the owner or a owner of the goods carried or his authorised representative.

19. Therefore, apart from the driver, 2 persons could travel in the vehicle either as employees of the owner of the insured vehicle or as owner of goods or such owner's representative to be covered under Section 147(1) (i) (b) of the Act.

20. It must be recalled that by the Motor Vehicles (Amendment) Act, 1994, Section 147 came to be amended. The expression "including owner of the goods or his authorised representative carried in the vehicle" was added in Section 147 (1) (i) (b) of the Act.

21. As per Section 147(1) (b) (i) of the Motor Vehicles Act, 1988, an insurer is required to cover the risk of the owner of the vehicle to the owner of the goods and also his representative apart from his employees in case of death or bodily injury sustained by them out of use of the insured vehicle in a public space.

22. In Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd., (2014) 14 SCC 243, the Hon'ble Supreme Court held as follows:-
As has been interpreted by this Court, an owner of the goods or his authorised agent is covered under the policy. That is the statutory requirement. It does not cover any passenger. We are absolutely conscious that the authorities to which we have referred to herein before lay down the principle regarding non-coverage of passengers.

23. The Court had earlier given an expansive interpretation to Section 147(1) (b) in New India Assurance Co. Vs. Satpal Singh, (2000) 1 SCC 237 : 2000 SCC (Cri) 130. The Hon'ble Supreme Court had held that under the 1988 Act an insurance policy covering third-party risk was not required to exclude gratuitous passengers in a vehicle no matter that the vehicle is of any type or class. It also held that the earlier decisions of this Court rendered under the 1939 Act vis-a-vis gratuitous passengers were of no avail while considering the liability of

the insurance company in respect of any accident which occurred or would occur after the 1988 Act came into force.

24. The correctness of the above judgment in *New India Assurance Company Limited Vs. Satpal Singh and Others*, (2000) 1 SCC 237: 2000 SCC (Cri) 130, was doubted, in *New India Assurance Co Vs. Asha Rani*, (2003) 2 SCC 223 : 2003 SCC (Cri) 493. It was felt that *Satpal Singh's* case (*supra*) needed relook insofar as cases covered under the 1988 Act prior to its amendment in 1994 were concerned.

25. A three-Judge Bench in *New India Assurance Co Vs. Asha Rani*, 2003) 2 SCC 223 : 2003 SCC (Cri) 493, noticed that Section 147 of the 1988 Act prior to its amendment in 1994 and after its amendment in 1994 and held in para 9 of the Report as follows:

9. "In *Satpal* case [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly Section 46, by which the expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle', the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of Clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that

sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existing expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal case [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

26. Thus, the position before the amendment in 1994 was that an owner of the goods or his representative were not covered or protected under the insurance. After the aforesaid amendment, they are covered by the risk under the Act and the Policy.

27. Therefore, the question to be answered in this Civil Miscellaneous Appeal is whether the deceased who had travelled as a person who had purportedly contracted the insured vehicle to carry tannery items ie. cow hides proposed to be purchased from Pudukottai was to be considered as a owner of the goods or a gratuitous passenger for the appellant insurance company made liable or entitled to distance itself from the liability in view of the specific language in view of Section 147(1)(i)(b) of the Act.

28. If the deceased had travelled as a gratuitous passenger, the appellant Insurance Company is well within its rights to distance itself from the liability as the policy was a third party risk policy, i.e. an "Act Policy".

29. The deceased was purportedly proceeding to Pudukottai to purchase tannery items and while proceeding, the insured van met with an accident. The deceased who was in the cabin of the insured vehicle sustained grievous injuries due to the accident and died shortly thereafter on the way to the hospital. The deceased had not purchased the goods for which the insured vehicle has been ostensibly hired by him.

30. The expression "including the owner of goods or his authorised representative" in Section 147(1)(b)(i) of the Act has to be given a plain and restricted meaning.

31. In Shivawwa Vs. National India Insurance Company Limited, (2018) 5 SCC 762, the High Court had found the merit in the contention raised by the Insurance Company that the deceased was not travelling along with his goods at the time of the accident and thus held that the Insurance Company could not be saddled with any liability.

32. However, the Hon'ble Supreme Court reversed the finding of the High Court and restored the award passed by the Tribunal with the following observation:-

14. However, in the facts of the present case, we have no hesitation in taking a view that consequent to affirmation and restoration of the finding of fact recorded by the Tribunal regarding the factum of deceased having travelled along with his goods at the time of the accident, the insurer would be obliged to satisfy the compensation amount awarded to the claimants.

33. Thus, to claim compensation under the Act, the deceased should have carried the goods in the insured vehicle. In this case the deceased had not purchased the goods and/or loaded it on the insured vehicle.

34. Therefore, the submission of the learned counsel for the appellant insurance company that the deceased had travelled as an gratuitous passenger is to be upheld as no goods had not been purchased. Section 147(1)(i)(b) which widened the insurance cover by an insurer cannot be given a more liberal

interpretation in absence of any ambiguity in the language used in it.

35. The Tribunal has thus mis-directed by holding that the appellant Insurance Company is liable to compensate the 50% of the liability to the claimant. At the same time, it is open for the claimant to get compensation from the 10th respondent, as the Tribunal has concluded on facts that both the vehicles were negligent. The 10th respondent as the owner of the insured vehicle is vicariously liable for the negligence of his driver (9th respondent). The impugned Judgment and Decree of the Tribunal is thus liable to be modified to that extent.

36. I therefore set aside the order of the Tribunal fixing 50% of the liability on the appellant. Though the certificate of insurance and the policy described in the certificate of registration is to be deemed to have been transferred in favour of the 10th respondent with effect from the date of its transfer as per section 157 of the Act, it does not further the case of the respondent.

37. The fact that the insured vehicle had been sold and transferred to Mr.S.Dhasthakeer, the 10th respondent herein on 16.04.2003 (about a month prior to the accident on 15.05.2003) is of no consequence as even otherwise, the 1st to 6th respondent / claimants could not have maintained a valid claim against the appellant insurance company for the reasons already stated.

38. For the above reasoning, this Civil Miscellaneous Appeal filed by the appellant insurance company is allowed while giving liberty to 1st to 6th respondents (claimants) to work out the remedy as now directly against the 10th respondent.

39. Since the notice on the 10th respondent has not been served in this appeal, I am therefore inclined to remit the case back to the Tribunal to decide the case afresh to determine the liability on the 10th respondent in the light of the decision of the Hon'ble Supreme Court in Shivawwa raj Vs. National Insurance Co. Ltd., (2018) 5 SCC 762, within a period of six months from the date of receipt of a copy of this Judgment.

40. The 8th respondent State Transport Corporation is however directed to deposit the 50% of the compensation as determined by the Tribunal, together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit with proportionate costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

41. Since the 2nd to 4th respondents have attained the age of majority during the pendency of this Civil Miscellaneous Appeal and the same was recorded vide order dated 08.02.2019 in C.M.P.Nos.12144 and 12145 of 2016 of this Court, on such deposit being made by the 8th respondent State Transport Corporation, the 1st and 6th respondents/claimants is permitted to withdraw the amount in the same proportion as directed by the Tribunal, by filing suitable application before Tribunal.

42. By an order dated 02.03.2011, this Court had directed the appellant Insurance Company to deposit the entire amount of compensation in respect of its liability awarded by the Tribunal. If the amount of compensation has been deposited by the appellant Insurance Company, it is permitted to withdraw the same together with interest, by filing suitable application before the Tribunal.

43. The present Civil Miscellaneous Appeal stands allowed with the above observations. No cost. Consequently, Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

The (I Additional District Judge),
Motor Accident Claims Tribunal
Erode.

Copy to: The Section Officer,
V.R. Section,
Highcourt, Madras.

C.M.A.No.531 of 2011
and M.P.No.1 of 2011

SV(CO)
CSR 20.04.2021