IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.628 OF 2011

(THROUGH VIDEO CONFERENCING)

Perumal ... Appellant/1st Respondent

.Vs.

1.Kanchana Bai

2.Minor Saridha

3.Minor Yuvarani
(Minor respondents 2 & 3 being rep. by N.F. Guardian/1st respondent/Mother Kanchana Bai.)

4.Rani

5.Minor Prema

6.Minor Maniram Singh
(Minor respondents 5 & 6 being rep. by N.F.Guardian/4th respondent/Mother Rani.

7.Munna Bai
.. Respondents 1 to 7/Petitioners

8.The New India Assurance Co. Ltd.,
Divisional Office, Premier complex,
102, Yercaud Junction Road,
Salem 636 016.
... 8th Respondent/
2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.1275 of 2004, on the file of the Motor Accident Claims Tribunal, (I Additional District Court, Salem), Salem, dated 03.04.2009.

For appellant : Mr.K.Kuppusamy

For 8th respondent : M/s.R.Sreevidya

J U D G M E N T

Though notice has been served to the 1st to 7th respondents, there is no representation on behalf of them. Since no adverse orders are proposed to be passed against the 1st to 7th respondents, this Civil Miscellaneous Appeal is taken up for final hearing.

2. The owner of the insured lorry is the appellant and is aggrieved by the impugned Judgment and Decree dated 03.04.2009 passed by the Motor Accident Claims Tribunal (I Additional District Court, Salem), Salem in M.C.O.P.No.1275 of 2004.

3. By the impugned Judgment and Decree, the Tribunal had exonerated the 8th respondent Insurance Company on the ground that the policy does not cover the risk in the case of the deceased who travelled as a agent of owner of the goods even though same was considered for calculating the compensation.

4. I have heard the learned counsel for the appellant owner of the insured lorry and 8th respondent Insurance Company.

5. There is no dispute regarding the accident in this case. The deceased had travelled as a representative of the owner of the goods. As per Section 147 of the Motor Vehicles Act, 1988, a policy has to be issued by the Insurance Company is to cover the risk of owner of the vehicle and owner of the goods or his/her representatives. The depositions of P.W.-1 and P.W.-2 confirm the same. The Ex.P1 FIR also confirms that the deceased was an accountant of the owner of the goods at the time of the accident.

6. That being the case, I do not find any merits in the impugned Judgment and Decree exonerating the 8th respondent Insurance Company of liability as an insurer. Further, in the decision of the Full Bench of this Court in Branch Manager, United India Insurance Company Limited Vs. Nagammal and others, 2008 SCC OnLine Mad 973 : (2009) 1 L.W.702, it was held as follows:-

> 31.Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:
>
> (i) The Insurance Policy is required to cover the liability envisages under Section 147, but wider risk can always be undertaken.
>
> (ii) Section 149 envisages the defences which are open to the Insurance Company. Where the

Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of “pay and recover”, as statutorily recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v) Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the appellate court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.

(vi) No such direction can be issued by any trial court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no trial court is expected to decide contrary to such decision.

> (vii) Where, however, the matter has already been decided by the trial court before the decision in Baljit Kaur's case, it would be in the discretion of the appellate court, depending upon the facts and circumstances of the case, whether the doctrine of "pay and recover" should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be.

7. Further, this Court in Royal Sundaram Alliance Insurance Company Limited Vs. D.Kunasekran and others, reported in 2014 SCC OnLine Mad 1557 equivalent to (2014) 2 TN MAC 79, has held as follows:-

> 44. Admittedly, the vehicle involved in the accident, is a goods carriage vehicle and not a Contract Carriage Vehicle. Insofar as the goods carriage vehicle is concerned, Section 147 makes an exception, to the passengers, who accompany the goods, as owners or their representatives. As per Section 147 of the Motor Vehicles Act, liability to pay Compensation to the owner of the goods or his authorised representatives, travelling in a Goods Vehicle, is covered under Act Policy. The provision amply makes it clear that there is no total prohibition, as to the coverage of liability for the persons travelling in a Goods Vehicle, other than the owner of the goods or his representative. The Insurer is absolved of its liability from payment of Compensation only, in the case, where the injuries or death occurred to an individual, travelling in the goods carriage vehicle, not in the capacity as owner of goods.

8. Therefore, the 8th respondent Insurance Company is directed to pay the compensation awarded by the Tribunal together with interest at 7.5% p.a from the date of claim petition till the date of deposit and proportionate costs, within a period of eight weeks from the date of receipt of a copy of this Judgment.

9. On such deposit, 1st and 7th respondents are permitted to withdraw their shares together with interest at 7.5% p.a, less any amount already withdrawn, by filing suitable applications.

10. Since the 2^{nd} to 3^{rd} and 5^{th} to 6^{th} respondents are minor, their shares shall be deposited by the Tribunal in anyone of the Nationalised Bank under reinvestment scheme till they attain majority. The 1^{st} respondent, who is guardian of the 2^{nd} to 3^{rd} respondents, is permitted to withdraw the accrued interest from the deposit of the 2^{nd} to 3^{rd} minor respondents once in three months directly from the said Bank. The 4^{th} respondent, who is the guardian of the 5^{th} to 6^{th} respondents, is permitted to withdraw the accrued interest from the deposit of the 5^{th} to 6^{th} minor respondents once in three months directly from the said Bank. On attaining majority, all the minor respondents may be permitted to withdraw their shares, by filing suitable application before the Tribunal.

11. If the appellant owner of lorry has deposited any amount of compensation awarded by the Tribunal, he is hereby permitted to withdraw the same together with interest, by filing suitable application before the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is allowed with the above observations. No cost.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Motor Accident Claims Tribunal,
(I Additional District Court, Salem), Salem.

2. The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.No.628 of 2011

CA(CO)
CS/11/10/2021