



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.11.2020

Pronounced on: 02.12.2020

WEB COPY

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1710 of 2016
and
C.M.P.No.12913 of 2016

United India Insurance Co.Ltd.,
Divisional Office No.II,
104-A, Peramanur Main Road,
Salem-636 007.

... Appellant/
II Respondent

Vs

1.C.Moorthy
S/o.Chinnathambi

... 1st Respondent/
Claimant

2.M/s.Gokulraj Transport,
223, Sankar Fils Road,
Gugai, Salem-636 006.

... IInd Respondent/
1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2015 made in M.C.O.P.No.425 of 2013 on the file of MACT (Special Sub Judge-II) at Salem.

For Appellant : Mrs.I.Malar

For Respondents : Mr.S.P.Yuvaraj for R1

: No appearance for R2

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is filed by the Insurance Company. The Tribunal award fixing the initial liability on the Insurance Company and to recover from the offending vehicle owner is challenged in this appeal.



2. The first respondent herein is the claimant in M.C.O.P.No.425 of 2013 on the file of Motor Accidents Claims Tribunal, Salem. He is a welder by profession working in Om Siva Sakthi Lorry Body works. On 25.07.2011, the lorry bearing registration No. TN 30-E-7899 came to the workshop for welding purpose. After completion of the welding work, the claimant in the lorry proceeded to Prakash Radiator Shop. At about 5.30 pm, when the lorry nearing Prakash Radiator Shop, near Mekala Coffee Bar, Arasamarathukaratoor, Seelanaickenpatty By-Pass Road, Salem, there was a live electrical wire lying low crossing the road. The claimant with a stick lifted the wire meanwhile the driver of the lorry suddenly moved the lorry. As a result, the live wire got severed and fell on the claimant. The claimant sustained fracture of his left parietal bone and fracture of the sphenoid sinus walls. He was treated as inpatient in a private hospital for 4 days and then shifted to the General Hospital, Salem. Where he was treated as inpatient till 15.08.2011.

3. Criminal case against the lorry driver was registered. Claiming compensation of Rs.15,00,000/-, petition was filed against the owner of the lorry and its insurer.

4. The owner of the lorry remained ex-parte. The Insurance Company contested the claim on the ground that the accident occurred due to negligence of the claimant. Being an unauthorised passenger in a goods vehicle, the Insurance Company is not liable to compensate the claimant. The compensation claimed is not proportionate to the injuries and loss sustained.

5. The Tribunal on considering the evidence awarded a sum of Rs.2,05,710/-. Taking note of the fact that the claimant was an unauthorised passenger, relying upon the dictum of this Court rendered in New India Insurance Co.Ltd., -vs- Thangavel and others reported in 2011 (1) TNMAC 281, directed the Insurance Company to pay and recover from the vehicle owner.

6. In the appeal the learned counsel submitted that, for an unauthorised passenger in a goods vehicle there is no cover of risk for the passenger. So, the Insurance Company is not liable to compensate. The Insurance Company is not statutorily liable under section 147 of the Motor Vehicles Act to compensate unauthorised passenger in the goods vehicle. The Tribunal ought not to have directed the Insurance Company to first pay and then recover from the vehicle owner. The Tribunal award is contrary to the judgment of this Court rendered in



IFFCO TOKIO General Insurance Company Ltd -vs- Muthumani and others: reported in 2014 (2) TNMAC 442 and the judgment of the Hon'ble Supreme Court rendered in National Insurance Company Ltd -vs- Savitri Devi and others: Reported in 2013(11) SCC 554.

WEB COPY

7. The learned counsel for the first respondent submitted that, the appellant Insurance Company has collected premium under package policy. It covers the risk of own damages and third party claim. The claimant is a third party as far as the insured and insurer. Having collected premium, the Insurance Company cannot abdicate its responsibility. The Tribunal has rightly followed the dictum in Thangavel case (cited supra) and ordered pay and recovery.

8. Heard both sides. Records perused.

9. Ex R-1 is the copy of the Insurance Policy. The vehicle is covered for own damage risk and third party risk including Limited Liability for the driver. The vehicle is a goods carrier vehicle and no additional premium is collected for passengers. Ex P-1 is the copy of the FIR. Complaint is against the lorry driver for rash and negligent driving. The claimant has sustained injury when he tried to lift a live electrical wire running low across the road.

10. In IFFCO TOKIO General Insurance Company Ltd -vs- Muthumani and others: Reported in 2014 (2) TNMAC 442 this Court while considering the appeal by the Insurance Company against the award passed in favour of three collies who sustained injury while travelling in the Mahendira Maxi Truck van as gratuitous passengers directing the Insurance Company to pay and recover from the vehicle owner who violated the provisions of the Motor Vehicles Act and policy conditions, has considered the judgment of the Hon'ble Supreme Court rendered in Savitri Devi case and Thangavel case (cited supra) and held that the pay and recovery will not apply. In case of gratuitous passengers travelling in a goods vehicle the Insurance Company need not pay. The relevant passages in the judgment is extracted below:-

" 8. In fact, I had an occasion to deal with the same issue in the case of United India Insurance Company Ltd., Vs. M. Thangavel [2011 (2) TN MAC 774]. In the said case, by relying upon various judgments of the Hon'ble Supreme Court, it has been held that only in a case, where the Insurance Company is successful in its defence under



WEB COPY

Section 149, it may yet be required to pay the amount to the Claimant and thereafter, it may recover the same from the owner of the vehicle. When the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle under Section 147, unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely, there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. Under such circumstances, a direction could not be given to the Insurance Company to pay the owner and recover from the owner of the vehicle.

12. In fact, in the judgment reported in 2013 (11) SCC 554 in the case of National Insurance Company Ltd Vs. Savitri Devi and others, the Hon'ble Supreme Court has set aside the order of the High Court, where the High Court had directed the Insurance Company to pay the compensation amount to the victims and to recover the same from the owner of the vehicle in the case of gratuitous passengers travelling in goods vehicle. Therefore, in my considered opinion, in the case of gratuitous passengers travelling in goods carriage vehicle, absolutely there is no need to pay compensation by the Insurance Company, since there is no contractual liability under the statute to pay the amount to the gratuitous passengers travelling in the goods carriage vehicle.

13: Therefore, the order of the Tribunal to the extent of directing the Insurance company to pay the compensation amount to the claimants and to recover the same from the owner of the vehicle alone is set aside and the Insurance Company/appellant herein is exonerated from its liability to pay the compensation amount. The claimants can work out their remedy to get the compensation



WEB COPY

amount from the owner of the vehicle in the manner known to law. The appellant/Insurance Company is permitted to withdraw the amount deposited by them if any before the Tribunal".

11. In the instant case also, the Insurance Company has not collected additional premium for passengers, there is no contractual liability or statutory liability for the Insurance Company to indemnify the owner of the vehicle. Therefore, the principle of pay and recovery is not applicable to the facts of this case. Hence the Insurance Company is exonerated from its liability. In the result, the order of the Tribunal is set aside to the extent of directing the Insurance Company to pay and then recover. The claimant is at liberty to recover the award amount from the vehicle owner/second respondent directly. The Insurance Company is permitted to withdraw the amount deposited if any before the Tribunal.

12. Accordingly, the Tribunal award is modified as above and the Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is also closed. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
(Special Sub Judge-II), Salem.

+lcc to Mr.S.P.Yuvaraj, Advocate, SR.No.38768

C.M.A.No.1710 of 2016
and C.M.P.No.12913 of 2016

NR(CO)
PM(31/08/2021)