

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 525 of 2015
and M.P. No. 1 of 2015

The Branch Manager,
Oriental Insurance Co. Ltd.,
Dharmapuri.

... Appellant/2nd Respondent

Vs.

1.Kamatchi

2.K. Krishnan

3.K. Arul

... Respondents/Petitioner/
Respondents 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.07.2013, made in M.C.O.P. No. 113 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr. M. Krishnamoorthy

For Respondents: No appearance (RR1 & 2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 10.07.2013, made in M.C.O.P. No. 113 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No. 113 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 06.08.2007.

3.According to the 1st respondent, on the date of accident viz., 06.08.2007, while the 1st respondent was traveling in the

Minidor Auto bearing Registration No. TN-29-F-9559, belonging to the respondents 2 and 3, along with vegetable baskets to sell at Bargur, the 2nd respondent, driver of the Minidor Auto drove the vehicle in a rash and negligent manner, at uncontrollable speed and due to rash and negligent driving, the Minidor Auto got capsized. The accident has occurred due to rash and negligent driving on the part of the 2nd respondent. The 1st respondent has taken treatment in Government Hospital, Krishnagiri, for the injuries sustained by her in the accident. Hence, she claimed a sum of Rs.3,00,000/- as compensation.

4.The appellant-Insurance Company filed counter statement and denied various averments made by the 1st respondent in the claim petition. According to the appellant, the 2nd respondent, driver of the Minidor Auto possessed only LLR and did not possess driving license and as per policy, the 3rd respondent is owner of the vehicle, but as per R.C., the 2nd respondent is owner. At the time of accident, 22 persons traveled in the Minidor Auto, which is a goods vehicle, violating the policy conditions. In the accident, as alleged in the claim petition, the 1st respondent did not suffer disability. In any event, the appellant is not liable to pay the compensation to the 1st respondent and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined Dr. M. Devendiran as P.W.2 and marked 5 documents as Exs.P1 to P5. The appellant examined Administrative Officer as R.W.1 and did not mark any documents.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.1,18,000/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

7.Against the said award dated 10.07.2013, made in M.C.O.P. No. 113 of 2009, the appellant-Insurance Company has come out with the present appeal.

8.Learned counsel appearing for the appellant contended that the vehicle involved in the accident is a commercial vehicle and the seating capacity is 1+1. At the time of accident, more than 20 persons traveled in the vehicle as evidenced by the FIR marked as Ex.P1. The Tribunal ought to have exonerated the appellant and directed the owner of the Minidor Auto to pay the compensation as owner violated the policy condition. The Tribunal erred in ordering pay and recovery when there is violation of policy condition and prayed for setting aside the award. In support of his contentions, the learned counsel for

the appellant relied on the following judgments:

(i). 2009 ACJ 925 [National Insurance Co. Ltd., Vs. Rattani and others]:

"12. Even if the submission of Mr. Subramonium Prasad that in the truck the goods offered by way of gift by the bride party were being transported is correct, the deceased and others could not have become the representatives of the owner of the goods. Even otherwise, in view of the averments made in the claim petition and the first information report the said contention cannot be accepted.

Furthermore, in their depositions, the witnesses examined on behalf of the claimants themselves stated that about 30-40 persons were travelling in Tempo truck. All 30-50 persons by no stretch of imagination could have been the representatives of the owners of goods, meaning thereby, the articles of gift."

(ii). 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others):

"50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the

claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed."

9. Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation for them either in person or through counsel. The 3rd respondent remained exparte before the Tribunal and notice to the 3rd respondent is dispensed with.

10. Heard learned counsel appearing for the appellant and perused the materials available on record.

11. From the materials on record, it is seen that the vehicle involved in the accident is Minidor Auto. As per FIR, 22 persons traveled in the Minidor Auto at the time of accident, which was not denied by the 1st respondent. The 1st respondent has alleged that she is a Vegetable Vendor and she traveled in the Minidor Auto along with the case. In the FIR, it has been stated that the Minidor Auto was hired for transporting ice-cream boxes for repairing and on the way, 20 persons who were standing were allowed to travel in the vehicle as passengers. This statement in the FIR is not disproved by the 1st respondent by letting in any acceptable evidence or there is nothing on record to show that the 1st respondent or others have filed any objection to the contents of the FIR and to contend that they traveled along with the goods. The Tribunal considering the evidence of P.W.1, R.W.1 and Ex.P1 - FIR, has held that 22 persons traveled in the Minidor Auto at the time of accident and violated the policy condition. The Tribunal having held so, erred in directing the appellant to pay the compensation at the first instance and recover the same from the 2nd respondent. The said portion of the award is erroneous and it is contrary to the judgment of the Division Bench of this Court reported in 2018 (2) TNMAC 731 DB

(Bharati AXA General Insurance Co. Ltd., v. Aandi and others) and the judgment of the Hon'ble Apex Court reported in 2009 ACJ 925 (National Insurance Co. Ltd., Vs. Rattani and others), wherein it has been held that the Insurance Company is not liable to pay the compensation to the gratuitous passengers. From the award of the Tribunal, it is seen that the 1st respondent traveled only as gratuitous passenger. For the above reason, the portion of the award directing the appellant to pay the compensation at the first instance and recover the same from the 2nd respondent alone is set aside and the 1st respondent is entitled to recover the compensation awarded by the Tribunal only from the 2nd respondent. It is made clear that if any amount is deposited by the appellant and the same was withdrawn by the 1st respondent, the appellant is not entitled to recover the same from the 1st respondent, but the appellant is entitled to recover the said amount only from the 2nd respondent.

12. For the above reason, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,18,000/- along with interest and costs is confirmed. The 2nd respondent is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 113 of 2009. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant-Insurance Company is permitted to withdraw the amount, if any, lying in the credit of M.C.O.P. No. 113 of 2009. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.4460

C.M.A. No. 525 of 2015

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srg 29/09/2020