

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.48 of 2012

M/s.Iffco Tokya General Insurance Co. Ltd.
No.28, II Floor, North Usman Road,
T. Nagar, Chennai - 600 017. ... Appellant/2nd Respondent

Versus

1.Perumal S/o. Raji Pillai ...1st Respondent/Claimant

2.E. Ambrose S/o. Ellapalli ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 30.01.2010 made in M.C.O.P.No.48 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ranipet, Vellore.

For Appellant : Mr.E. Rajadurai.
(For M.B Raghavan)

For Respondent-1 : Mr. C. Prabakaran

For Respondent-2 : Mr. G. Thangavel

J U D G M E N T

The Insurance Company has preferred this appeal against the Judgment and order in M.C.O.P.No.48 of 2009 dated 30.01.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ranipet, Vellore questioning the liability on their side.

2. The brief of the case is as follows:

On 13.09.2007, As Tractor-Trailer was capsized due to rash an negligent driving of the Tractor's driver, the claimant/1st respondent sustained grievous injuries in the said accident when he was travelling on it. In view of the injuries, the claimant has filed the claim petition in M.C.O.P.No.48 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ranipet, Vellore seeking for compensation of

Rs.9,00,000/-. After trial, the Tribunal has awarded a sum of Rs.4,50,389/- in favour of the claimant/1st respondent herein directing the Insurance company/appellant herein to pay the aforesaid compensation to the claimant/1st respondent herein. Being aggrieved by the award, the Insurance company has preferred the present appeal questioning the liability on their side.

3. The learned counsel for the appellant would submit that the Tribunal has grossly erred in fastening liability on the Insurance company whereas the claimant/1st respondent herein was unauthorized passenger in the offending vehicle and not covered under Section 147 Motor Vehicle Act, 1988. It is further stated that as the claimant/1st respondent herein has travelled in the offending vehicle when there is no seating capacity, it is a clear violation of policy and permit condition. Hence, the Insurance company is not liable to pay compensation as unauthorized passenger in the offending vehicle without seating capacity is to be carried and the owner of the offending vehicle is alone responsibility to bear the compensation. Hence, this Court may be pleased to exonerate the Insurance company/appellant herein from the liability of paying the compensation to the claimant/1st respondent herein.

4. On the other hand, the learned counsel for the ^{1st} respondent would submit that as the claimant/1st respondent was travelling as owner of the paddy bags in the offending vehicle, the Insurance company is liable to pay compensation to the claimant/1st respondent herein. Further, the claimant/1st respondent was awarded after considering the entire oral and documentary evidence. Hence, there is no need to interfere with the award passed by the Tribunal.

5. Heard, the learned counsel for both parties and perused the entire oral and documentary evidence placed before this Court.

6. The factum and manner of the accident being rash and negligent manner driving of the offending vehicle under Section 163-A is not dispute. However, the liability on the Insurance company is alone disputed.

7. On perusal of the award, the Tribunal has confirmed after taking into consideration entire oral and documentary evidence that the accident had happened due to the rash and negligent driving of the driver of the offending vehicle belonging to the 2nd respondent herein which is insured with the appellant Insurance company herein. However, the Tribunal has not considered the terms and condition of the policy insured with

the Insurance Company in the case of seating capacity is permitted. In the absence of producing the supporting documents as the claimant/1st respondent was working as employee in the offending vehicle and there is seating capacity of 4 in the offending vehicle, it could not be considered that the claimant/1st respondent was traveling as authorized passenger as per the terms and conditions of the policy when there is one seating capacity in the offending vehicle. In these circumstances, in Royal Sundaram Alliance General Insurance Co. Ltd Vs. P. Ayyakannur reported in 2012(1) TN MAC 89(DB), the Division Bench of this Court held that the insurer cannot be held liable to cover risk of passengers not authorized or not permitted to be carried in vehicle and also referred to the Judgment of Hon'ble Supreme Court in the case "National Insurance Co. Ltd. Vs. Cholleti Bharatamma and others reported in 2008(2) TN MAC 29(SC) for corroboration of its view.

8. In view of the above observation and considering the facts and circumstances of this case, this Court is of the considered view that neither the claimant/1st respondent was authorized passenger nor employee in the offending vehicle. Hence, the Insurance company/appellant is not liable to pay the compensation to the claimant/1st respondent herein since the claimant/1st respondent was traveling as gratuitous passenger in the offending vehicle, when there is no seating capacity apart from the driver which is violation of the terms and condition of the Insurance policy.

9. Accordingly, the appellant-Insurance company is entitled to withdraw the respective award amounts from the Tribunal if it was deposited if any. The Claimant/1st respondent is at liberty to seek compensation as awarded by the Tribunal against the owner of the offending vehicle and the claimant is entitled to receive the compensation awarded by the Tribunal from the owner of the vehicle alone. At the same time, the Insurance Company is exonerated from its liability from paying the compensation to the claimant/1st respondent herein.

10. In the result, the appeal is allowed exonerating the appellant/Insurance company from paying the compensation to the claimant/1st respondent herein thereby the impugned award passed by the Tribunal is modified as above. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Copy to:

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Ranipet, Vellore.

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

+1cc to Mr.C.Prabakaran, Advocate Sr.10613

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.11528

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