IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020	Pronounced on:19.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2277 of 2016
& C.M.P.No.16036 of 2016

National Insurance Co. Ltd.,
No.122/165, Nethaji Road,
Manjakuppam, Cuddalore,
Cuddalore District. ...Appellant/2nd Respondent

/versus/

1. Kannammal, 38 years,
W/o.Selvam,
Emapper Village, Kallakurichi Taluk,
Villupuram District. ...1st Respondent/Petitioner

2. Murugappan,
S/o.Sivagnanam,
Kolavai, Thittakudi Taluk,
Cuddalore,
Cuddalore District. ...2nd Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 27.10.2015 made in M.C.O.P.No.560 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi.

For Appellant : Mr.S.Arun Kumar,

For R2 : Mr.T.L.Thirumalaisamy

For R1 : No appearance

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company aggrieved by the award passed by the Tribunal and liability fixed upon the Insurance Company to pay compensation to the claimants.

2. The facts of the case is that, on 16.04.2008 when a mini lorry van bearing registration No.TN-31-M-4534 carrying marriage Sridhana articles with five persons capsized near Oxford School at Sankarapuram-Kallakurichi Main Road, Thiru.Karthi aged about 20 years who was one among the persons travelling along with the goods, died. His mother Kannammal filed claim petition seeking a sum of Rs.15,00,000/- compensation for his death. The Insurance Company, under which the vehicle was insured at relevant point of time filed counter denying their liability to pay quoting policy violation though the vehicle was insured under them.

3. The Insurance company has filed filed counter stating that the deceased travelled as an unauthorized passenger along with five members in the offending vehicle. As per the policy conditions, the owner of the vehicle cannot allow any passengers in the goods vehicle. Being an Act only policy, when there is violation of policy condition and Motor Vehicle’s Act, the insurer is not liability to indemnify the vehicle owner.

4. Before the Tribunal, the claimant/Kannammal and one Kolanjiyappan, who witness the accident were examined as P.W.1 and P.W.2. The First Information Report, Post-mortem report, Motor Vehicle Inspector Report and final report laid by the police after investigation and copy of the Insurance Policy marked as Ex.P.1 to Ex.P.5. On behalf of the respondents 2 witnesses and 3 Exhibits were marked.

5. The Learned Counsel for the claimant contended that her son/Karthi was working as a load-man earning a sum of Rs.6,000/- per month. When he accompanied the goods as a load-man, due to negligence of the mini lorry driver, the door of the van unfastened and her son fell down and died.

6. To prove the negligence of the driver of the mini lorry, P.W.2 was examined, who was witness to the accident. On behalf of the respondent/Insurance Company, the Executive Assistant and the owner of the vehicle were examined as R.W.1 & R.W.2. Through these witnesses and the Investigation report marked as Ex.R.2, it was contended that the deceased being an unauthorized passenger and not a load-man working under the owner of the vehicle, the Insurance Company is not liable to pay compensation.

7. The Tribunal, after considering the terms of Insurance policy marked as Ex.P.5 found that an additional premium of Rs.125/- for five of his employees and Rs.25/- for others was collected by the Insurance Company. The evidence let in by P.W.1 and P.W.2 reveals that the deceased was engaged by the vehicle owner, who accompany the goods to load and unload.

Therefore, held the Insurance Company liable and awarded a sum of Rs.7,47,000/- with 7.5% interest.

8. In the appeal, the Insurance Company has contended that when the Policy and Premium paid only for load-man accompanied the goods. The deceased in this case was not a load-man. Six persons including the deceased were travelling in the goods vehicle when accident occurred. To claim benefit of Insurance Coverage, the claimant ought to have been an employee under the insured. The owner-cum-driver examined as R.W.2 has not produced any document to show that the deceased Karthi was his employee, therefore, it was contended by the Learned Counsel for the appellant, the claimant not entitled for compensation payable by insurer being an unauthorized passenger in the goods vehicle. As per the principle laid down by the Hon’ble Supreme Court in New India Insurance Company Limited -vs- C.M.Jaya and others reported in reported in 2002 (1) ACJ 299, the tribunal award has to be setaside.

9. The Learned Counsel appearing for the appellant would submit that, the Insurance Company is not liable to pay compensation for gratuitous passenger for whom, there is no premium paid to cover the risk. In the present case, the Insurance premium was paid for third party risk and five employees cover under Workmen's Compensation Act and for one other employee, the deceased does not fall under either of the above category. Even if the deceased Karthi was accompanied as a load-man, he was employed, not by the vehicle owner. In such circumstances, the Insurance Company is not liable to pay compensation.

10. The Learned Counsel appearing for the respondent would state that the contention now raised in the appeal was not raised before the Tribunal, the Tribunal after perusing the Insurance Policy Ex.P.5 = Ex.R.1, had rightly held that having collected premium for five employees and one more person other than employee, the Insurance Company cannot be absolved from its responsibility. The claimant being a widow, lost her only son in the accident. The Tribunal had fixed a notional income of Rs.6,500/- for arriving loss of earning. It has not taken into consideration for his future prospects and the claimant was not adequately compensated.

11. On considering the rival submissions, this Court holds that the appeal preferred by the Insurance Company deserved to be dismissed.

12. The specific case of the claimant and also being proved through F.I.R and charge sheet Ex.P.1 and Ex.P.4 that while returning back from marriage hall Transporting Sridhana articles and other vessels, due to negligence of the mini lorry driver, the bolt of the door opened and the deceased fell down and died. The Insurance policy not only covers third party risk but five employees under Workmen's Compensation Act and one independent employee. The Insurance Company claim that the one employee others than Workmen's Compensation Act refers driver and not a gratuitous passenger. In this case, the driver is none other than the owner and F.I.R has been registered against him and he has also been examined by the Tribunal as R.W.2. Even assuming six persons were travelling. R.W.2, in his evidence has specifically deposed that, he engaged the deceased for loading and unloading. The deceased accompanied the goods from marriage hall. When the evidence of R.W.2 and the Insurance policy copy clearly indicates that an additional premium being paid for five employee, this Court finds no violation of policy condition. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm
To:

1.The Motor Accidents Claims Tribunal,
III Additional District Judge,
Kallakurichi.

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

+2cc to M/s.S.Arunkumar, Advocate Sr.37438,37440
+1cc to M/s.T.L.Thirumalaisamy, Advocate Sr.37317
+1cc to Mr.V.Ragavachari, Advocate Sr.37360

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srg 23/08/2021