IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2807 of 2016
and
C.M.P.No.20347 of 2016

Branch Manager,
M/s.Bharti AXA General Insurance Co.Ltd.,
Doddaanekundi, Outer Ring Road,
Bangalore - 560 037
C/o.Branch Manager,
M/s.Bharti AXA General Insurance Co.Ltd.,
Divya Trade Centre, Ist Floor,
No.11, Brindavan Road, Fair Lands,
Salem - 636 016 .. Appellant/2nd Respondent

Vs.

1.Narayana Rao ..1st Respondent/Petitioner
2.C.Shankaran .. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.04.2016 made in M.C.O.P.No.320 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Hosur.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.Mukund R.Pandiyan [For R1]
R2 - No appearance

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 18.04.2016 passed in M.C.O.P.No.320 of 2013.

2. The accident occurred on 13.08.2011 on 5.45 P.M at Hosur to Krishnagiri NH-7 road, near Alagubavi Diversion Road. Shoolagiri Police Station, Hosur Taluk, Krishnagiri District registered a case in Crime No.389/2011 under Section 249, 337 of I.P.C.

3. In respect of the same accident, this Court has already passed an order in C.M.A.No.1504 of 2015 dated 02.03.2020, wherein the award of the Tribunal was set aside and the C.M.A was allowed. The said order is directly in connection with the same accident. The relevant paragraphs of the said judgment are extracted hereunder:

> "4. Admittedly, the vehicle involved in the accident is Tata Ace vehicle bearing temporary Registration No.TN-30-AL.T-3173, which was from Soolagiri to his house along with timber and wooden blocks.
>
> 5. The Trial Court adjudicated the issues with reference to the documents and the evidences.
>
> 6. The following issues were framed by the Tribunal:-
>
> "(1) Whether the accident took place due to the rash and negligent driving of the driver of the first respondent vehicle ?
>
> (2) Whether the respondents are liable to pay the compensation. If so, what is the quantum of compensation the petitioner is entitled ?
>
> 7. With reference to Point No.1, the Trial Court arrived a conclusion that the respondents have not examined any evidences and marked any documents and considering the F.I.R Ex.P-1 and the evidence of PW-1 could able to arrive a conclusion that the accident had occurred due to the rash and negligent riding of the rider of the second respondent vehicle.
>
> 8. With reference to Point No.2, the Tribunal made a finding that as per the Registration Certificate of the abovesaid offending vehicle, during the course of cross-examination, it was admitted that the offending vehicle was insured with the appellant/ Insurance Company at the time of accident. RW-2 one Mr.R.Pradeep Kumar, Legal Officer of the appellant-Insurance Company was examined and he has filed the proof affidavit before the Tribunal. In the said proof affidavit, he has stated that the first respondent had allowed the petitioner along with fourteen other persons to travel in Tata Ace vehicle, which was insured with the appellant/Insurance Company and therefore, all those passengers are unauthorised passengers. The vehicle met with an accident is a goods carrier and the sitting capacity in the said goods carrier vehicle is only two as per Registration

Certificate. Thus, the first respondent had violated policy condition. The first respondent-vehicle was charged for the offence under Section 62(1) read with Section 192 of the Motor Vehicles Act, 1988, for carrying passengers in violation of permit and the copy of the policy was marked as Ex.R-2 and the charge sheet was marked as Ex.R-3.

9. Though the Tribunal arrived a finding with reference to the fact that the vehicle which met with an accident is a goods carrier and more specifically, Tata Ace vehicle, wherein there is no permit to carry the passengers, the passengers were also gratuitous passengers, then granted the compensation only on the ground that the vehicle was insured at the time of accident and therefore, the appellant/ Insurance Company is liable to pay compensation.

10. Mere policy is insufficient to grant compensation. The conditions of the policy are also to be considered by the Tribunal. The nature of the policy i.e., contract, terms and conditions as well as the rights and the liabilities agreed between the parties are to be considered for the purpose of granting compensation. The Tribunal has granted compensation merely on the ground that the vehicle was insured at the time of accident and therefore, the passengers who succumbed to injuries are entitled for compensation.

11. Undoubtedly, such an approach is not in consonance with the legal principles. Admittedly, the vehicle which met with an accident is Tata Ace, which is a goods carrier, wherein the passengers cannot be allowed to travel and there is no permit. Thus, all those passengers, who travelled at that point of time, are gratuitous passengers and therefore, there is no coverage under the policy by the appellant/Insurance Company.

12. In support of the grounds raised in the present Civil Miscellaneous Appeal, the learned counsel for the appellant cited a judgment of the Hon'ble Division Bench of this Court in the case of Bharati AXA General Insurance Company Ltd vs. Aandi and two others [2018 (2) TN MAC 731 (DB)], wherein in paragraph-15, the Hon'ble Division Bench of this Court observed as under:-

> "15. While Mr. S. Arunkumar, learned counsel appearing for the Insurance

> Company would contend that the doctrine of pay and recover evolved by the Courts in National Insurance Company Ltd. vs. Swaran Singh reported in (2004) 3 SCC 297, would apply only to cases where there is a subsisting contract of Insurance covering the risk and there is a violation of a certain condition in the contract of insurance and not to cases where there is no contract covering the risk."

13. Considering all these facts and circumstances, admittedly, the vehicle which met with an accident is a goods carrier and admittedly, there is no permit to carry passengers. Thus, all the passengers are to be construed as gratuitous passengers and the Tribunal also recorded the said findings and travelling beyond the scope of the policy, the Tribunal granted compensation merely on the ground that the policy was in existence at the time of accident. Thus, the Tribunal has committed an error, which is vital and certainly not in consonance with the policy conditions and the principles to be followed.

14. In view of the fact that the appellant/Insurance Company cannot be held liable to pay compensation and the accident occurred is admitted and the injuries sustained are also established, the respondent claimants are entitled for the compensation awarded by the Tribunal against the owner of the vehicle Mr.C.Shankaran/third respondent. Thus, the respondent claimants are entitled to enforce the judgment and decree dated 27.02.2015 passed by the learned Special Sub-Judge, Special Sub-Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P. No.2596 of 2013 against the owner of the vehicle Mr.C.Shankaran/third respondent by initiating appropriate action. As far as the appellant/Insurance Company is concerned, they are exonerated.

15. Accordingly, the judgment and decree dated 27.02.2015 passed by the learned Special Sub-Judge, Special Sub-Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P. No.2596 of 2013 stands set aside in respect of the appellant/Insurance Company is concerned and consequently, C.M.A.No.1504 of 2015 stands allowed. However, there shall be no order as to costs. The connected miscellaneous

petitions are closed.”

4. In view of the facts and circumstances as stated above, the judgment and decree passed in M.C.O.P.No.320 of 2013 dated 18.04.2016 is set aside and C.M.A.No.2807 of 2016 stands allowed.

5. The Insurance Company, if deposited any amount, they are at liberty to file an appropriate application for refund of the said amount with accrued interest.

6. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Sub Judge,
(Motor Accidents Claims Tribunal),
Hosur.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.21758

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.21402

C.M.A.No.2807 of 2016

CA(CO)
GMY(24/11/2020)