IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.09.2020	Pronounced on: 15.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.387 of 2016
& C.M.P.No.2907 of 2016

ICICI Lombard General Insurance Company Limited,
Arihand Plaza, 1st Floor,
Nos.84 & 85, Wall Tax Road,
Parrys,
Chennai - 600 003. ... Appellant/2nd Respondent

/versus/

1. Tamil Selvi,
W/o.Vijayan,
No.24, Kamaraj Street,
Alangkuppam,
Pondicherry. .... 1st Respondent/Petitioner

2. Vijayan,
S/o.Swamikanu,
No.24, Kamaraj Street,
Alangkuppam,
Pondicherry. ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.07.2015 in M.C.O.P.No.2388 of 2011 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), at Cuddalore.

For Appellant : Mrs.R.Sree Vidhya

For R1 : Mr.M.Siva Kumar,
for Mr.D.S.Thiruma Valavan

For R2 : Given up

J U D G M E N T
(The case has been heard through video conference)

The Insurance Company which is aggrieved by the award passed by the Motor Accident Claims Tribunal, Cuddalore, fixing the liability to pay compensation to the claimant has preferred this appeal.

2. The claim petition filed seeking compensation for a

sum of Rs.5,00,000/- for the injury sustained by one Tamilselvi. According to the claimant, on 07.11.2010 at about 05.00 P.M., when she was travelling in the TATA ACE pickup van bearing Registration No.PY-01-AH-3826, dashed against the TATA sumo vehicle due to the negligence of the pick up van driver. In the impact, the claimant sustained grievous injury.

3. The Insurance Company filed counter stating that the claimant is an unauthorised passenger and not eligible to claim compensation. She has falsely stated that the TATA ACE dashed a four wheeler. The TATA ACE vehicle not insured with them and the driver of the vehicle had no valid license.

4. The Tribunal, after considering the F.I.R, against the TATA ACE pick up van driver based on the complaint given by TATA sumo driver, the Insurance Policy, discharge summary of the claimant and the disability certificate held that the accident has occurred due to the negligence of the pickup van driver.

5. The Tribunal rejected the contention of the Insurance Company that the claimant was an unauthorised person. Mr.Vijayan, the owner of the vehicle is the husband of the claimant. Being the wife of the vehicle owner, she cannot be treated as Coolie or employee. The Tribunal held that there is no bar for spouse to work as Coolie. Therefore, the Insurance Company is responsible to indemnify the injured under the insurance policy Ex.P.5. Based on the doctor's evidence and the disability certificate, 35% of the disability was assessed and total sum of Rs.1,46,385/- was awarded as compensation.

6. In the appeal, the Insurance Company has stated that the Tribunal has erred in fastening the liability on the appellant. It failed to note that the petitioner was wife of the owner cum driver of the vehicle. At the time of accident, she was travelling as an unauthorised passenger. She was neither a Coolie nor owner of the goods.

7. The Learned Counsel for the Insurance Company would submit that it is well settled through catena of judgments that the insurer is not liable to pay compensation for unauthorised passenger travelling in a goods carrier. No passenger can be carried in the goods carriage, other than the owner or his representative of the goods carried or the employee of the insured to the extent as prescribed under Section 147 of the Motor Vehicle Act, 1988. In the instant case, the claimant being the wife of the insured was travelling unauthorisedly. She was neither owner of the goods nor the representative of the goods. As per law declared by the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others reported in (2003) 2 SCC 233 and National Insurance Company Limited Vs. Cholleti Bharatamma reported in (2008) 1 SCC 423, unauthorized passenger in the goods vehicle are not covered in the Insurance

and the insurer need not indemnify the insured, if it is established that the injured is an unauthorized passenger.

8. The Learned Counsel for the claimant/respondents would submit that the injured was traveling in the TATA ACE van as a Coolie and she sustained communitted fracture of both bones right leg. She was admitted in the hospital for treatment. The fracture was reduced and AK POP cast was applied. The TATA ACE vehicle is permitted to carry two persons including driver. She was not an unauthorised passenger. The insurance policy also covers two persons. The police based on the complaint of the TATA Sumo, F.I.R was registered against the 1st respondent under Sections 297 and 338 I.P.C and also filed final report. For treatment, the claimant incurred more than Rs.20,000/- expense. The injured caused her is 35% disability. Therefore, the award passed by the Tribunal is just and unreasonable.

9. The short point canvassed by the Learned Counsel for the appellant is that the claimant is the wife of the 1st respondent who is the owner cum driver of the TATA ACE pickup van. It is a goods vehicle. Only owner of the goods nor representative of the goods is permitted to travel along with the goods. The seating capacity of the vehicle though may be 1 + 1, as per law laid down by the Hon'ble Supreme court in Asha Rani and Cholleti Bharatamma case, the claimant has to prove that she travelled as owner of the goods or representative of the owner of the goods. There is no evidence to that effect in the instant case, therefore the claimant is not entitled for compensation.

10. Perusal of the Insurance Policy which is marked as Ex.P.5 indicates that it is a Fully Built pickup van with carrying capacity of two persons. The RC of the vehicle also indicates that the seating capacity of the vehicle is two.

11. It is contended by the Learned Counsel for the appellant is that the injured travelled as an unauthorised person. Whereas, in her evidence, the claimant has stated that she is Coolie and she was travelling in the said TATA ACE as Coolie. In the cross examination, she has deposed that she was working in Devaki Tiles as load women.

12. As observed by the Tribunal, the spouse of the vehicle owner cannot be per se held as an unauthorised person when the vehicle capacity is two. The premium for the policy is collected for two persons by the insurer. It is not the case of the Insurance Company that there were more than two persons travelling in the vehicle at the time of accident or at the time of accident, there was no goods in the vehicle. In the counter statement they have falsely contented that the 1st respondent had no Driving License, whereas, his Driving Licence is marked as

Ex.P.3. Again, they have falsely stated that the vehicle TATA ACE bearing Registration No.PY-01-AX-3826 was not insured under them, whereas, the insurance policy is marked as Ex.P.5. The other contention is that, she was already hit by a four wheeler while walking is also without any basis and contra to the F.I.R report Ex.P.1.

13. Relying upon the accident intimation report given by the hospital to the police, the insurer content that the accident occurred not in the manner as stated by the claimant. The said accident intimation report marked as Ex.R.2 is spoken by the Insurance Investigation Office and not by the author. Who gave the information to the author of Ex.R.2 is not known.

14. Accident Intimation Report, it is a contemporaneous document immediately after the accident, whereas F.I.R is lodged by the driver of the TATA sumo, three days after the incident. But then, the police investigated the complaint have arrived at a conclusion that the accident had happened in the manner spoken in the F.I.R and therefore, had filed final report against the 1st respondent for offences under Sections 278 and 337 of I.P.C. Hence, this Court is of the view that Ex.R.2 cannot be relied upon when the F.I.R was registered in the manner prescribed under law and the investigation by the police presumed to be done in the manner known to law.

15. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Motor Accident Claims Tribunal
   (Special Subordinate Judge),Cuddalore.

2. The Section Officer,
   VR Section, Madras High Court.

C.M.A.No.387 of 2016
& C.M.P.No.2907 of 2016

GMR(CO)
GN(23/04/2021)