IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.09.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.440 of 2016
and
C.M.P.No.3397 of 2016

The Bharathi AXA General Insurance Co.Ltd.,
Metro Plaza 2nd Floor,
No.162, Anna Salai,
Chennai ...Appellant/2nd Respondent

/versus/

1.Kanchana
2.Annadurai .. Respondents/ Petitioners and R1
3.Mahalingam ...Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.10.2015 made in M.C.O.P.No.267 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Ranipet.

For Appellant :M/s S.Arun kumar

For Respondents1&2 :Mr.M.Siva kumar
For Respondent3 : No Appearance

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

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This appeal is preferred by the Insurance Company aggrieved by the award passed by the Tribunal.



3. The specific case in the claim petition is that the accident victim Sarala was travelling as a coolie in a tractor-trailer bearing registration No.TN-23AL 3478 and TN-23L 3439. Due to rash and negligent driving, she fell down from the tractor. The tyre of the trailer ran over the deceased Sarala and caused fatal injuries. Case was registered against the tractor driver. A sum of Rs.10,00,000/- as compensation was sought by the dependants of the deceased.

4. In the counter, the Insurance Company specifically took a stand that the insurance coverage for the tractor-trailer is subjected to policy conditions. At the time of the accident, deceased Sarala along with four others were travelling in the mudguard of the tractor. The deceased is an unauthorised passenger, who is not covered under the policy, since the tractor-trailer is exclusively meant for transporting goods and not passengers. Further, the vehicle was registered for agricultural purpose. Whereas the vehicle was used for carrying bricks. It is used for commercial purpose. The claim of Rs.10,00,000/- as compensation is also excessive and exorbitant.

5. The Tribunal, after going through the insurance policy, which is marked as Ex.R4, held that the policy is a comprehensive policy, which covers person engaged for loading and unloading. Therefore, the deceased is not a gratuitous passenger. She was a coolie travelling in the vehicle along with goods and awarded compensation of Rs.5,90,000/- with the right to recover from the owner of the vehicle.

6. The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal ought not to have fixing the liability on the Insurance Company, since there is a patent violation of the policy conditions. The deceased was not engaged as a coolie in a tractor at the relevant point of time. Apart from the victim, there were three more persons travelling unauthorizingly on the mudguard of the tractor, which is prohibited and contrary to the policy condition as well as permit condition.

7. On perusal of the Insurance Policy and the First Information Report, this Court finds that it is a clear case of policy violation and the Insurance Company is not liable to pay any compensation to the deceased, who has travelled on the mudguard of the tractor. However observing that the premium has been collected by the Insurance Company, the Tribunal has ordered pay and recovery without considering the fact that premium was collected only against the third party claims and not for passengers or employees.

8. It is now brought to the notice of this Court that the entire award amount has already been deposited by the Insurance Company pursuant to the interim order dated 01.03.2016 passed by this Court and the claimants have withdrawn 50% of their respective shares together with proportionate interest from the amount deposited.

9. In view of the judgment passed by the Hon'ble Supreme Court in Oriental Insurance Company Ltd. Vs. Pauldurai and others reported in 2012 (1) TNMAC 545, in case of gratuitous passenger contrary to the policy condition, the Insurance Company is not liable to pay the compensation. The Tribunal, which ought not to have ordered pay and recovery.

10. In cases similar to the facts of this case, the Hon'ble Supreme Court in more than one occasion has held that if a person travelling in the mudguard of the tractor as a gratuitous passenger, the Insurance Company is not liable to pay compensation. Particularly in 2007 (2) TNMAC 66 SCC Oriental Insurance Company Ltd. Vs. Brij Mohan and others, which is almost an identical on facts, where the victim travelled in a tractor carrying soil to the brick kiln, the Hon'ble Supreme Court has held that the tractor though insured used other than agricultural purpose violates the condition of the insurance policy, hence the insurer is not liable to pay compensation. Therefore, in view of the above facts, while allowing the appeal, this Court modify the pay and recovery order as below:

The claimant shall withdraw the 50% of the award amount with interest already deposited, if not so far withdrawn. For the remaining 50%, they can proceed against the owner of the vehicle. The Insurance Company which has deposited the entire award amount is permitted to withdraw the 50% of the award amount with interest from and out of the amount deposited pursuant to the interim order passed in this appeal. It is also permitted to proceed against the insured/vehicle owner to recover the 50% award amount paid to the claimants.

11. With the above modification, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition is also closed. There shall be no order as to costs.



Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge, Ranipet.

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

+1cc to Mr.S.Arun Kumar , Advocate SR.No. 30381
+1cc to Mr.C.Prabhakaran, Advocate SR.No. 30366

C.M.A.No.440 of 2016
and C.M.P.No.3397 of 2016

A.SK(21.04.2021)