

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.09.2020	Pronounced on: 08.09.2020
-------------------------	---------------------------

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.449 & 450 of 2016
and
C.M.P.Nos.3406 & 3407 of 2016

C.M.A.No.449 of 2016

The Branch Manager,
The New India Assurance Co. Ltd.,
Karaikudi Branch. ...Appellant /4th Respondent

/versus/

1. Rani
 2. Mani
 3. Sekar
 4. Rajeswari
 5. Kasthuri
 6. Kalaiselvi
- ...1 to 5 Respondents/Claimants
7. The State Bank of India,
Anandhur Branch, Thiruvadanai Taluk,
Ramnad District.
 8. The Oriental Insurance Co. Ltd.,
Divisional Office, Katpadi Road,
Vellore District.
- ...6 to 8 Respondents/1 to 3 Respondents

C.M.A.No.450 of 2016

The Branch Manager,
The New India Assurance Co. Ltd.,
Karaikudi Branch. ...Appellant

/versus/

1. Victoria
2. Minor Rebekkal

Page numbers

3. Minor Jaisurya
rep. by their mother and guardian Victoria
Anjaneyan (Died) ...1 to 3 Respondents/Claimants

4. Kalaiselvi

5. The State Bank of India,
Anandhur Branch, Thiruvadanai Taluk,
Ramnad District.

6. The Oriental Insurance Co. Ltd.,
Divisional Office, Katpadi Road,
Vellore District. 4 to 6 Respondents/1 to 3
Respondents

C.M.A.No.449 of 2016 : Appeal filed under Section 173 of the
Motor Vehicles Act against the Judgment and Decree made in
MACTOP No.19 of 2012 on the file of the Motor Accident Claims
Tribunal (I Additional District and Sessions Judge) at Vellore,
dated 16.04.2015.

C.M.A.No.450 of 2016 : Appeal filed under Section 173 of the
Motor Vehicles Act against the Judgment and Decree made in
MACTOP No.263 of 2012 on the file of the Motor Accident Claims
Tribunal (I Additional District and Sessions Judge) at Vellore,
dated 16.04.2015.

C.M.A.No.449 of 2016 :

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr. C.Prabakaran for R1 to R5
R6 - Refused
M/s.S.R.Sumathy for R7
Mr.P.Kandasamy for R8

C.M.A.No.450 of 2016 : सत्यमेव जयते

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.C.Prabakaran for R1 to R3
R4 - Refused
M/s.S.R.Sumathy for R5
R6 - Given up

Page numbers

COMMON JUDGMENT

(The case has been heard through video conference)

A.Sekar aged about 32 years and Selvam aged about 60 years died in the accident on 05/02/2007, when they were travelling in the tractor and trailer carrying banana nursery. The vehicle capsized due to the rash and negligence of the tractor driver by name Subramaniam. Based on the complaint given by Mani, S/o.Selvam one of the passengers in the tractor, case was registered against Subramaniam under sections 279, 337 and 304 (A) IPC. As per the FIR, along with the informants 5 others were travelling in the tractor bearing registration No. TN 65 E 6855 and the attached trailer TN 65 E 6891 carrying banana nursery.

2. M.C.O.P.No.19 of 2012 was filed by the dependants of Selvam seeking Rs.5,00,000/- compensation. M.C.O.P.No.263 of 2012 was filed by the dependants of Sekar seeking Rs.7,00,000/- compensation. Initially, in both the claim petitions, the owner of the vehicle, the bank to which the vehicle hypothecated for loan and the Oriental Insurance company as insurer was arrayed as respondents 1 to 3. After the 3rd respondent denied the averment that the offending vehicle was not insured with them, the claimants filed petition to implead the 4th respondent under which the vehicle had valid insurance cover. While allowing the implead petition I.A.No. 216 of 2011 dated 24/06/2011, the Tribunal has observed that the claim petitioners are not entitled to claim interest from the proposed respondent viz., the New India Assurance Company for these period, if they ultimately succeed in the claim petition.

3. On impleading the 4th respondent Insurance Company pleaded that the claimants are not entitled for any compensation since the deceased are unauthorised passengers. They are not supposed to travel in the tractor contrary to policy condition this defence did not find favour with the Tribunal.

4. The Tribunal conducted joint trial and passed common order. Taking into account the age of the deceased Selvam (60 years : applied multiplier 9), awarded Rs.3,95,000/- for the claimants in M.C.O.P.No.19 of 2012. Taking into the age of the deceased Sekar (32 years: applied multiplier 16) awarded Rs.6,75,000/- for the claimants in M.C.O.P.No.263/2012. It ordered that the respondents 1 to 4 shall jointly and severally pay the compensation with interest.

5. The submission of the learned counsel for the appellant is that, the FIR (Ex.P-1) and the investigation report of Ex.R-2 reveals that in the tractor attached with the trailer

Page numbers

loaded with banana saplings, Selvam (deceased), Sekar (deceased), Mani (informant), Pichandi, Kuppan, Annadurai and Muthu were sitting on the banana saplings loaded in the trailer. The vehicle capsized when the driver lost his control. As per the R.C., only one person is permitted to travel in the tractor i.e., the driver. The vehicle was admittedly driven by one Subramaniam against whom case was registered for causing hurt, grievous hurt and culpable homicide by rash and negligent driving. Rest of the passengers including the deceased are all unauthorised passengers travelling contrary to statute and in violation of policy conditions. Therefore under law the insurer is not liable to pay any compensation to the claimants. The insurer should be exonerated and the owner of the vehicle should be held responsible for the compensation.

6. The learned counsel appearing for the State Bank of India who is the 7th respondent in C.M.A.No.449 of 2016 and 5th respondent in C.M.A.No. 450 of 2016 submitted that the vehicle is hypothecated with the bank for the loan availed. The vehicle was insurance under the appellant and was valid on the date of accident under Ex.P-7. The appellant alone is liable to indemnify the owner of the vehicle. The Tribunal erred in holding all the respondents jointly and severally liable to pay the compensation.

7. The learned counsel for the claimants submitted that the claimants are poor agricultural coolies. The accident occurred when they were transporting banana saplings to the field. Selvam who died in the accident is the owner of the goods. He met with the accident when he was transporting the goods to his field. The insurer cannot deprive the just compensation on technical plea after collecting additional premium. At the most, the insurer can seek for the right of recovery from the owner/ insured after making payment to the claimants.

8. In the instant case, the vehicle is an insured vehicle. On examining Ex.P-7 insurance policy, we find the appellant had collected additional premium of Rs. 1,335 + 134/ besides premium for third party risk. The policy covers third party basic, compulsory PA to owner cum driver and WC to 3 employees. The owner of the vehicle has paid a premium of Rs.5,182/- for the tractor and Rs.5,816/ for the trailer. Therefore this Court finds no force in the submission of the appellant counsel that carrying passenger is totally prohibited under the policy conditions.

9. In M/S. National Insurance Co. Ltd vs Baljit Kaur And Ors on 6 January, 2004, the three judges Bench of the

Page numbers

Hon'ble Supreme Court while revisiting the judgements in New India Assurance Co -vs- Satpal Singh (2000) (1) SCC 237 and New India Assurance Co Ltd -vs- Asha Rani (2003) 2 SCC 223, observed that,

"By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

Sub-section (5) of Section 147 of the Motor Vehicles Act, 1988 lays down as under :

"147. Requirements of policies and limits of liability:-

(1) to (4).....

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

10. In this case vehicle is insured. The trailer is insured for WC employee 3 numbers besides, PA cover to the owner/driver and third party. Premium is collected separately under these heads. However it is evident that condition has been violated by overloading passengers (7 instead of 3) along with the goods. In view of this Court, the question of fixing the liability of the insurer in case of policy violation is substantially settled by the Supreme Court in Swarna singh case and Baljith Kaur case. If the violation of policy condition is not fundamental in nature, the insurer cannot be exonerated, but can only be given the liberty to recover after paying the claimants.

11. For the said reason, the Tribunal award in respect of liability is modified as below:-

The appellant/4th respondent in M.C.O.P.No.19/2012 and M.C.O.P.No.263/2012 is liable to pay Rs.3,95,000/- and Rs.6,75,000/- respectively along with 7.5 % from the date of

Page numbers

impleading (24/06/2011) till the realisation as ordered by the Tribunal. After payment same shall be recovered from the owner of the vehicle Kalaiselvi (first respondent in both the MCOP's).

12. In the result, C.M.A.No.449 of 2016 and C.M.A.No.450 of 2016 are partly allowed. The appellant is directed to deposit the award amount within a period of 12 weeks from today. On such deposit the claimants are permitted to withdraw their respective shares as prescribed by the Tribunal by filing appropriate application. Consequently, connected miscellaneous petitions are also closed. No order as to costs.

Sd/-

Assistant Registrar (AR-I)

//True Copy//

Sub Assistant Registrar

rpl

To

1. Motor Accident Claims Tribunal,
(I Additional District and Sessions Judge),
Vellore
2. The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr.C.Prabakaran, Advocate SR.29471 & 29473

C.M.A.Nos.449 & 450 of 2016
and

C.M.P.Nos.3406 & 3407 of 2016

CP(CO)
CB(01/12/2020)

सत्यमेव जयते

WEB COPY

Page numbers