IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.09.2020	Pronounced on: 06.10.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.Nos.527 and 879 of 2016 and
C.M.P.No.4416 of 2016

United India Insurance Co. Ltd.,
No.5-B/11, State Bank of India Upstairs,
Salem Main Road,
Rasipuram. ... Appellant in C.M.A.No.527 of 2016

1.Arukkani
2.Saravanakumar
3.Jayakumar ....Appellants in C.M.A.No.879 of 2016

/versus/

1.Arukkani
2.Saravanakumar
3.Jayakumar
4.Vemban ... Respondents in C.M.A.No.527 of 2016

1.Vemban

2.The United India Insurance Co. Ltd.,
No.5-B/11, State Bank of India Upstairs,
Salem Main Road, Rasipuram.
.... Respondents in C.M.A.No.879 of 2016

Common Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 28.04.2015 made in M.C.O.P.No.392 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Rasipuram.

In C.M.A.No.527 of 2016:-

For Appellant : Mr.S.Arunkumar

For RR1 to 3 : Mr.Ma.Pa.Thangavel
For R.4 : No Appearance

In C.M.A.No.879 of 2016:-

For Appellants : Mr.Ma.Pa.Thangavel

For R.1 : No Appearance
For R.2 :Mr.S.Arunkumar

COMMON JUDGMENT

(The case has been heard through video conference)

These two appeals are directed against the award passed by the Motor Accident Claims Tribunal, Subordinate Judge, Rasipuram in M.C.O.P.No.392 of 2012 dated 28.04.2015.

2.The dependants of the deceased Subbu @ Subramani filed claim petition in M.C.O.P.No.392 of 2012 against the owner of TATA Ace bearing registration

No.TN 28 AZ 3839 and its Insurer viz., United India Insurance Company Ltd., Rasipuram seeking compensation of Rs.15 lakhs. As per the claim petition, the accident occurred while Subbu @ Subramani along with another person were travelling in a TATA Ace LMV goods carrier vehicle transporting cattle (cows). As per the F.I.R., the cattle became restless and rattling the vehicle, so the deceased tried to pacify the cattle but fell from the vehicle and sustained fatal injury.

3.The first information report was given by one Palanisamy who was co-passenger in the said LMV goods carrier. He was not examined by the claimants instead, a stranger by name Annadurai examined as P.W.2 has deposed that he saw the accident while travelling in his Two Wheeler. Due to rash and negligent driving of TATA Ace Driver, the vehicle ran into a ditch and turned turtle in which, Subbu @ Subramani sustained injury and died.

4.The Insurance policy of the vehicle is marked as Ex.R.1 indicates that insurance coverage for third party and one employee under Workmen Compensation Act. From the F.I.R., as well as in the other evidence, it is proved that, at the time of accident, beside the Driver-cum-Owner, two other persons were travelling in the goods vehicle along with cattle. The Tribunal after considering the claim petition and the counter has held that there is a policy violation by the owner by carrying excess passenger and therefore, the Insurance Company is entitled to recover the award amount after paying it to the claimants. On the said basis, the compensation of Rs.7,05,000/- was awarded with interest @ 7.5% per annum interest from the date of petition till the date of realisation.

5.In the appeal filed by the Insurance Company (C.M.A.No.527 of 2016), it is stated that the Tribunal ought to have exonerated the Insurance Company totally for the violation of policy condition and the Motor Vehicle Act not only for allowing excess passenger but also for carrying cattle in the goods vehicle. As per the Motor Vehicles Act, though the definition of goods includes cattle, in the ordinary goods vehicle, carrying cattle is prohibited. More so, when the deceased is an unauthorised passenger in the goods vehicle, the Insurer is not liable to pay the compensation. Therefore, the award directing the Insurance Company to pay and recover has to be modified as payable by the owner of the vehicle exclusively.

6.The learned counsel for the claimants and the appellants in C.M.A.No.879 of 2016, would submit that the order of the Tribunal directing the Insurer to pay and recover from the Insured is in consonance with the judgments of this Court rendered in **Chinnappan vs. K.P.Ramraj** (2012 (1) TNMAC 668) and in **The New India Assurance Company Ltd., vs. Varadi Lakshmi Devi & others** (CDJ 2014 MHC 3787).

7.Further, the learned counsel for the claimants would submit that the compensation of Rs.7,05,000/- awarded by the Tribunal is very less. The income of the deceased was assessed very low @ Rs.7,500/- per month instead of Rs.10,000/- and compensation under other heads also not in consonance with the settled principle of law in various judgements of the Hon'ble Supreme Court. The learned counsel would also rely upon the case in ***National Insurance Co.Ltd., Vs. Pranay Sethi and others*** (*2017 (2) TN MAC 609 (SC)*) which was rendered after the filing of the appeal and seek for just and fair compensation.

8.In these two appeals, the following two issues are involved:-

> *“(i)Whether the Insurer is liable to pay and recover in case of accident occurred to an unauthorised passenger who was carrying cattle in a LMV vehicle ? And*

> *(ii)Whether the compensation awarded to the claimants for the death of Subu @ Subramani aged 55 years is fair and reasonable ?*

9.It is an undisputed fact that the deceased was travelling in a goods vehicle with his cow along with another person by name Palanisamy. The said Palanisamy is the first informant to the police regarding the accident and he was not examined. The content of the F.I.R., is slightly variable with the deposition of P.W.2. When the vehicle is permitted to carry only one person, evidence clearly show that there were two passengers beside the Driver-cum-owner. Hence, there is patent violation of policy condition. 'Whether it is fundamental and basic, to exempt the insurance company, we find that the judgements starting from ***National Insurance Co Ltd –vs- Swaran Singh*** (AIR 2004 SC 1531) favours adoption of the principle pay and recover'. When the question of policy violation carrying cattle in LMV vehicle, the Hon'ble Supreme Court as well as few other High Courts and our High Court have directed the Insurance Company to pay and recover though the statute prescribes special vehicles for transporting cattle.

10.In **The Divisional Manager, Shriram General Insurance Co. Ltd., vs.**

Mahadevi (MFA NO.24040 OF 2013 (MV) dated 09.07.2019) the Dharwad Bench of the Karnataka High Court has held as follows:-

> "*16. Learned counsel for claimants has relied on the judgment in the case of New India Assurance Co.Ltd. V. Bhudhiya Devi and others reported in 2010 ACJ 2045. In Paragraph 3 the Hon'ble Supreme Court has held as follows:-*
>
> *3. Keeping in view the evidence of the father of the deceased, PW1 and wife of the deceased, PW 2, as well as the other evidence on record, we are satisfied that the deceased was travelling in the truck in question along with his cows and buffaloes. We are, therefore, of the opinion that the judgment of the High Court need not be interfered with."*
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> *17. The learned counsel also relied on the case in Oriental Insurance Company Ltd. Vs. Premakka and others reported in 2013 Kant. M.A.C.340(Kant). In the said case, the Division bench of this Court has held in para 13 as follows:-*
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> *"13. According to spot Panchanama (Ext.P.4), all the 29 goats and so sheeps being carried in the lorry died in the accident. A t that time, the deceased-Murthappa alias Murthy was taking goats/sheep in the lorry f or the purpose of sale in Sandi Bazar. Thus, the deceased was travelling in the lorry as owner of goods and not as a passenger. The contention of the Insurance Company that the deceased was travelling as a passenger in the goods vehicle is without any basis and contrary to Ex t.P.4. Since the*

deceased- Murthappa alias Murthy was travelling as owner of goods, the claimants are entitled to claim compensation from the Insurance Comp any. In other words, the Insurance Company is liable to indemnify the owner of the lorry in question. Accordingly, Point Nos.(ii) and (iii) are also answered in the affirmative in favour of the claimants."

18. Learned counsel has also relied on the judgment in the case of Subray Honnappa Naik and The Divisional Manager United India Insurance Co. Ltd. reported in 2011 ACJ 1464. In the said case, the division Bench of this Court held in para 26 as follows:-

"26. It is thus clear that goods statutorily include livestock. In the instant case, cow and calf carried in the vehicle being livestock is covered under the definition of goods."

19. In para 27, Rule 74 of the Motor Vehicle Rules is also extracted and it is held that for the purpose of this Rule includes goat, sheep, buffalo, bull, ox, cow, deer, horse, pony, mule, ass, pig or the young ones thereof as goods. In para 28, the Division Bench of this Court has held as follows:-

"28. This Rule which the learned Counsel has ref erred, only postulates and deals in what manner live stock could be carried. It does not refer to prohibition of carrying of livestock in any vehicle in any circumstance except the minimum requirement that is necessary for the purpose of transporting the livestock. This proposition in defence by the insurance company certainly is of no avail because the question that we are deciding is whether cow and calf carried in the vehicle co mes under the definition of goods. Being satisfied that livestock co mes under the definition of

goods, this contention which was admittedly not taken before the tribunal and is urged f or the first time in this appeal is also worth rejection."

20. Therefore, in the present case, it is proved that the deceased was travelling in the goods vehicle along with the bullocks which are considered as goods under the provision of M.V. Act as stated supra. Hence, the contention of the insurer that the deceased was travelling the goods vehicle as unauthorized passenger and that he was carrying the bullocks in the said vehicle in violation of the provisions of the M.V. Act has no merit and same is rejected."

11.In view of the above position, this Court is of the view that in consonance with the judgments of this Court and other High Courts, the award of the Tribunal directing the Insurance Company to pay and recover is upheld.

12.As far as the compensation is concerned, the deceased at the time of accident, on 22.08.2012, was aged about 55 years and there is no serious dispute about his age. In the claim petition, it is stated that the deceased was cattle merchant and agriculturists and earning Rs.15,000/- per month. To prove that the deceased was the cattle merchant and doing agricultural activity, no documents produced by the claimants. The Tribunal taking note of the fact that the accident occurred while the deceased transporting cow in the LMV vehicle, had fixed the income of the deceased at Rs.7,500/-. The Tribunal has failed to look at Ex.P.1, the F.I.R., copy wherein, Palanisamy who accompanied the deceased in the LMV vehicle has mentioned that the Informant (Panalisamy) is the professional Broker in cattle trade and the deceased used to occasionally accompany him. On the accident date, to buy one cow, the deceased accompanied him and they were returning with the cow. The cow became restless and rattled the vehicle and consequently, the Driver of the vehicle lost his control. This clearly indicates that the deceased who has transported the cow in a open type three wheeler failed and omitted to take necessary care and precaution to tie the cattle properly. Having allowed the cattle to rattle the vehicle, there is proportionate negligence on the part of the deceased. The deceased has invited the accident due to his recklessness. Hence, this Court holds that the award of Rs.7,05,000/- by fixing the monthly income of the deceased as high as Rs.7,500/- per month, even without any document need no modification. Probably, the Tribunal has taken note of the future prospects of the deceased and has compositely fixed the pecuniary loss at Rs.7,500/- per month. Therefore, this Court is of the view that no additional income towards future prospects for the 55 years old self employed deceased need be considered.

13.In the result, both the Civil Miscellaneous Appeals are dismissed. The award passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2020

jbm
Index :Yes
Speaking order/Non-speaking order.

To,

1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Rasipuram.

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

Dr.G.Jayachandran,J.

jbm

Pre-delivery Common Judgment in
C.M.A.Nos.527 and 879 of 2016

.10.2020