



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2020

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos. 374 and 375 of 2008

and

M.P(MD).Nos.1 and 1 of 2008

M.P(MD).Nos.1 and 1 of 2009

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C.M.A(MD) .No.374 of 2008

The Branch Manager,
The New India Assurance Co., Ltd.,
No.92, East Coast Chambers, 1st Floor,
G.N.Chetty Road, T.Nagar, Chennai.

... Appellant / 2nd
Respondent

Vs.

1.Murugan

... 1st Respondent/
Petitioner

2.C.Muthusamy

... 2nd Respondents/
1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.265 of 2005 dated 13.11.2007 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul.

C.M.A(MD) .No.375 of 2008

The Branch Manager,
The New India Assurance Co., Ltd.,
No.92, East Coast Chambers, 1st Floor,
G.N.Chetty Road, T.Nagar, Chennai.

... Appellant / 2nd
Respondent

Vs.

1.Chetty

... 1st Respondent/
Petitioner

2.C.Muthusamy

... 2nd Respondents/
1st Respondent

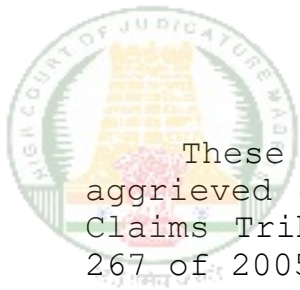
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.267 of 2005 dated 13.11.2007 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul.

In both appeals
(in both CMAs)

For Appellant :Mr.J.S.Murali

For R-1 :Mr.B.Prasana Vinoth

For R-2 :No appearance



COMMON JUDGMENT

These appeals have been preferred by the Insurance Company aggrieved over by judgment and award passed by the Motor Accidents Claims Tribunal (Fast Track Court), Dindigul in M.C.O.P.Nos.265 and 267 of 2005, dated 13.11.2007.

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2.The first respondent in both the appeals filed the claim petitions seeking compensation. According to them, on 10.06.2005 at about 24 hours, they traveled in a matador van bearing registration No.TN 33/K 4521 belonging to the first respondent from Dindigul To Palani. While the van proceeded near Ramaiah patty, the driver drove it in a rash and negligent manner and hence, he was not able to control the vehicle and eventually, it got capsized. In the impact, they sustained injuries. The claimant Murugan has stated that, at that time, he traveled in the van as a Cleaner of the vehicle.

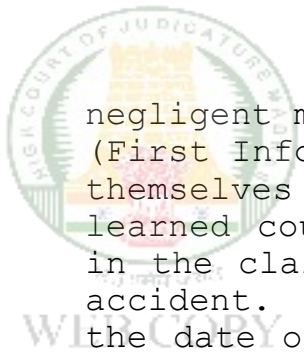
3.The appellant resisted the claim petitions by filing counter repudiating their liability on the ground that the injured claimants were passengers in the goods vehicle. That apart, they have disputed the other averments in the claim petitions.

4.Since the claim petition arise out of the same accident, it was taken up together and by a common judgment the Tribunal held that the accident occurred due to the negligence of the driver of the van and by following the decision in **2004 (1) CTC 210 (National Insurance Co., Ltd., Vs., Baljit Kaur and others)** issued a direction to pay compensation first to claimants as awarded and thereafter, to recover the same from the owner of the vehicle. Aggrieved over the direction, the Insurance Company is before this Court.

5.Mr.J.S.Murali, learned counsel for the appellant would argue that eventhough the claimant Murugan in MCOP.No.265 of 2005 had averred that, he traveled as a Cleaner at the time of accident in the offending vehicle, during the cross-examination, he accepted that he was one among the passengers in the goods vehicle. It is further contended that the insurance company cannot be mulcted liable to pay compensation to the claimants, who suffered injury as passengers in a goods vehicle. In this regard, the learned counsel placed reliance of the Court reported in **2018 (2) TN MAC 731 (Bharati AXA General Insurance Co.Ltd., Vs., Aandi and others)**.

6.The learned counsel for the first respondent Mr.B.Prasana vinoth made submission in support of the finding of the Tribunal. Though notice on the second respondent has been served and his name is printed in the cause list, none appeared for him.

7.In the instant cases, it is the case of the claimants that on 10.06.2005, they traveled in a matador van belonging to the first respondent from Dindigul to Palani and the vehicle met with an accident near Ramaiah patti since the driver drove it in a rash and



negligent manner. To substantiate the case of the claimants, Ex.P.1 (First Information Report was marked and the claimants were examined themselves as P.W.1 and P.W.2. As rightly pointed out by the learned counsel for the appellant, the claimant Murugan has stated in the claim petition that he traveled as a Cleaner at the time of accident. However, during the cross-examination, he stated that on the date of accident about 20 persons belonging to Vagarai Village came from Palani to Dindigul to attend a funeral and when they were returning back in the offending vehicle, the accident had taken place. He also accepted that as per the permit conditions, only 2 persons can travel in the goods vehicle. After considering the evidence of P.W.1 and P.W.2 and Ex.P.1, the Tribunal arrived at the conclusion that the claimants were passengers in the goods vehicle. As stated supra, by following the decision of the Hon'ble Supreme Court in **2004 (1) CTC 210 (National Insurance Co.Ltd., Vs., Baljit Kaur and others)**, the principle of "pay and recovery" was ordered.

8.in the judgment cited by the learned counsel for the appellant, the Division Bench of this Court followed the principles laid down in the case of **Asha Rani and Baljit Kaur** and observed that in the absence of any statutory requirement to cover the liability in respect of gratuitous passengers in a goods vehicle, the principle of "pay and recovery" is not applicable *ipso facto* to such cases. The relevant paragraphs are extracted hereunder:

"50. In fact, we find that in none of the judgments referred to viz., *National Insurance Co. Ltd. Vs. Swarn Singh & Ors.* reported in (2004) 3 SCC 297, *Mangla Ram Vs. Oriental Insurance Co. Ltd.* reported in (2018) 5 SCC 656, *Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.* reported in 2018 (9) Scale 310 and *Manuara Bar & Bench* (www.barandbench.com) 28 *Khatun and Others Vs. Rajesh Kumar Singh And Others* reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in *Shivaraj Vs. Rajendra* and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in *New India Assurance Company Vs. Asha Rani and others* and *National Insurance Company Ltd., Vs. Baljit Kaur and others* referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in



directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India."

9.keeping in mind the view taken in the latest decision referred to above, the direction issued by the Tribunal directing the appellant/Insurance Company to pay the award amount first to the claimants and thereafter, recover the same from the owner of the vehicle is set aside and accordingly, both appeals are allowed. It is open to the claimants to recover the award amount from the owner of the vehicle. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmk

To

The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Fast Track Court, Dindigul.

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.J.S.MURALI, Advocate (SR-23390[F] dated 01/12/2020)

C.M.A(MD)Nos. 374 and 375 of 2008
26.11.2020

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kmv (CO)

KK(31.12.2020) 4P 5C