IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA Nos.1632 to 1635 of 2011

The Oriental Insurance Company Ltd,
No.12, Katpadi Road,
Gudiyatham. ... Appellant in all C.M.As

..vs..

1.Nithiyanandam, ... 1st Respondent in C.M.A.No.1632 of 2011

2 .J.Sankar .. 1st Respondent in C.M.A.No.1633 of 201

3.Sundaramoorthy ... 1st Respondent in C.M.A.No.1634 of 2011

4.Karthikeyan (Minor)
rep by his next Friend and
father sankar ... 1st Respondent in C.M.A.No.1635 of 2011

5. G.Perumal ... 2nd Respondent in all C.M.As

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 30.04.2010 made in M.C.O.P.No.106 to 109 of 2005, on the file of the Motor Accident Claims Tribunal, Sub Court , Gudiyatham.

For Appellant : Mr. R.Sivakumar

For Respondents
1 & 2 : NA

COMMON JUDGMENT

These four appeals arise out of the same accident and are being disposed of the by this common judgment since the material facts are common.

The brief facts of the case is that on 26.11.2004 at 1.00pm the claimants have travelled in mini Mahindra Van bearing Reg.No.TN23-M-2514 along with luggages to perform the poojas for Kailasagiri Murugar. While the mini Mahindra Van proceeding near Gadambur, the driver of the van drove the same in a rash and negligent manner and in uncontrollable speed on the down of the road, he suddenly applied the brake, immediately the said Van upset and rounder three to four times on the left side of the road on the same speed. Due to the said accident, the claimants have sustained severe multiple and grievous injuries. Hence the claimants have filed separate claim petitions before the tribunal, claiming compensation against the owner of the lorry and the insurance company being insurer of the said vehicle.

2. The tribunal upon considering the oral and documentary evidence, has fixed the negligence on the part of the driver of the Mini Mahendra Van and awarded compensation to the claimants by way of common judgment. The Tribunal directed the owner of the vehicle and the insurance company to pay the compensation jointly and severally . Challenging the liability, the insurance company is before this Court.

3. Before Tribunal, the claimants examined themselves as PW1 to PW4 and marked documents Ex.P1 to Ex.P10. On side of the respondents, two witness were examined RW1 and RW2 and marked one document Ex.R1/Insurance Policy.

4. Heard the learned counsel for the appellant/ Insurance Company and the counsel for the respondents/ claimants and perused the materials available on record.

5. According to the the learned counsel appearing for the appellant/ insurance company on the date of the accident, the claimants have travelled as unauthorised passengers in the goods vehicle namely Mini Mahindra Van bearing Reg.No.TN23-M-2514. The vehicle involved in the alleged accident is only goods vehicle and the permit was issued only to carry the good vehicle. The learned counsel for the appellant further submitted that since the claimants in their claim petition itself have stated that they travelled in the said vehicle along with their family members, as per the policy conditions the claimants are not entitled for compensation.

6. The further contention of the appellant is that the tribunal failed to note that at the time of the accident 30 persons have travelled as unauthorised passengers in the said vehicle, therefore, the insurance company is not liable to

indemnify the insured. Ex.P1/FIR clearly speaks that the claimants have travelled in the good vehicle. Further the policy marked by the insurance company Ex.R2 also clearly shows that the policy does not cover the risk of the unauthorised passengers in the goods vehicle. Therefore, it is contended by the learned counsel for the appellant/insurance company the the common judgment passed by the tribunal is legally unsustainable and liable to the set aside.

7. On the other hand, the learned counsel appearing for the respondents/claimants have submitted that the tribunal after careful consideration of the documents and evidence has fixed the negligence on the part of the driver of the Mini Mahindra Van bearing Reg.No.TN23-M-2514 awarded the compensation and directed the owner of the vehicle and the insurance company to pay said amount jointly and severally. The said compensation and liability fixed by the tribunal was based on the records, therefore nothing warrants to interfere with the common judgment passed by the tribunal. Accordingly, these appeals liable to be dismissed.

8. From a perusal of Ex.P1/FIR, it is clear that the accident had occurred only due to rash and negligence on the part of the driver of the Mini Mahindra Van bearing Reg.No.TN23-M-2514. The evidence of RW1 /official witness of the appellant/insurance company also reveals the fact that at the time of the accident totally 30 persons had travelled in the said vehicle as unauthorised passengers. The policy/Ex.R1 which was in existence at the time of the accident does not cover the risk of unauthorised passengers in the goods vehicle. The tribunal has rightly assessed the documents and concluded that the accident had due to the rash and negligence on the part of the driver of the said Mini Mahindra Van bearing Reg.No.TN23-M-2514. This Court confirms the negligence fixed by the tribunal.

9. The short point involved in the present appeal is that whether the Insurance Company be absolved from liability to pay compensation to the claimant.

10. In this context, it is useful to rely upon the decision of the Division Bench of this Court in the case of BHARATI AXA GENERAL INSURANCE CO. LTD. VS. AANDI AND TWO OTHERS REPORTED IN 2018 (2) TN MAC 731 (DB) wherein the Division Bench of this Court held as under:

> ''25. A reading of the above provision makes it clear that an insurance policy which is a mandatory

statutory requirement is required to cover only certain classes of persons and not every person who chooses to travel in any type of vehicle. Therefore, there is no mandatory requirement for the Insurance company to cover persons who are travelling as passengers in a non passenger vehicle/ goods vehicle.

26. Section 149 imposes an obligation on the part of the insurers to satisfy the judgments and awards made against the persons insured in respect of third party risks. Section 149(2) requires the Court or the Tribunal to notify the Insurance Company regarding the claim and also hear the Insurance Company and prescribes the defences that are available to the insurer in such third party claims. One of the defences that is available to the insurer in such third party claims as set out under Section 149(2)(a)(i)(c) is that the insured vehicle being used for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle. Therefore, it is clear that a Insurance Company which faces the claim petition can raise a statutory defence to the effect that the vehicle in question was used for a purpose other than the purpose for which the permit had been issued, in order to avoid the liability. Both these provisions have to be necessarily read together.''

The aforesaid decision squarely applies to the facts of the instant case.

11. In the case on hand, the claimants have travelled along with 30 persons in the goods vehicle viz., Mini Mahindra Van bearing Reg.No.TN23-M-2514 as unauthorised passengers. Admittedly, the offending insured vehicle is a goods vehicle. The tribunal in the award while discussing the issue, has clearly stated that 30 persons including the claimants have travelled in the offending vehicle, but wrongly observed that the premium of RS.75/- paid by the insured covers the unauthorised passengers in the goods vehicle. A perusal Ex.R2/policy clearly shows that the said premium amount of Rs.75/- was collected for coverage of employee of the insured not for workman. Therefore, the decision of the tribunal fastening the liability on the appellant insurance company cannot be acceptable.

12. In view of the undisputed fact that 30 persons

including claimants had travelled as unauthorised passengers in the goods vehicle and the negligence was also proved on the part of the driver of the goods vehicle, the owner of the goods vehicle alone is liable to pay compensation as he violated the policy conditions. Therefore, this Court is of the view that the Insurance Company is not liable to pay compensation to the claimant.

13. Accordingly, the appellant/Insurance company is absolved from liability to pay compensation to the claimant. The appellant/ Insurance Company is permitted to withdraw the amount already deposited before the tribunal. The award passed by the tribunal against the appellant/Insurance company is set aside. Therefore, the award is only against the owner of the vehicle. It is for the respondents /claimants to recover the said amount from the owner of the vehicle in the manner known to law.

13. In fine, these Civil Miscellaneous Appeal are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court
   Motor Accident Claims Tribunal
   Gudiyatham.

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

+1cc to Mr.R.Sivakumar, Advocate SR.No.16155

CMA Nos.1632 to 1635 of 2011

NRL(CO)
GN(08/12/2021)