IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2021

PRONOUNCED ON : 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.1576 OF 2015
AND
CROS.OBJ.NO.5 OF 2021

The Branch Manager,
United India Insurance Co.Ltd.,
No.22, 1st Floor, Siyamaladeviamman Kovil,
Pandhaladi, Mannarkudi,
Thiruvarur District.
... Appellant /1st respondent in Cross Objection/
2nd Respondent

Vs.

1.R.Vivekanandan ....1st respondent /
2nd respondent in Cross Objection/
Claimant

2. Correspondent,
Anjalai Ammal Magalingam Engineering College,
Main Road, Kovilvenni,
Needamangalam Taluk
Thiruvarur District
... 2nd respondent/Cross Appellant/
1st Respondent

PRAYER in CMA.No.1576 of 2015:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.04.2014 and made in MCOP.No.38 of 2013, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Thiruvarur.

PRAYER in CMA.No.1576 of 2015:

This Cross Objection is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.04.2014 and made in MCOP.No.38 of 2013, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Thiruvarur, wherein the notice was served on 28.03.2020, to set aside the same.

For Appellant : Mr.S.Arunkumar

For R1 : M/s.F.Terry Chellaraja For Mr.C.Munusamy

For R2 : Mr.C.V.Vijayakumar

Cross Objection No.5 of 2021:-

For Appellant : Mr. Mr.C.V.Vijayakumar

For R1 : Mr.S.Arunkumar

For R2 : M/s.F.Terry Chellaraja For Mr.C.Munusamy

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, while the owner of the vehicle has preferred cross objection.

2. The first respondent herein, who is working in the college had travelled in College Bus and met with an accident and sustained injuries and thereby, filed a petition in M.C.O.P.No.38 of 2013, for claiming compensation for the injuries sustained in the road transport accident.

3. Before the Tribunal, owner of the vehicle/College Management has filed vakalath but counter not filed and thereby, the College Management was framed ex-parte. The appellant herein/Insurance Company has filed an interlocutory application under Section 170 of Motor Vehicles Act and the same was allowed. The Tribunal after enquiry has held that the accident has taken place due to the rash and negligence driving of the driver of the bus and accordingly held that the owner of the vehicle namely College Management is liable and hence, the policy is in force on

the date of the accident, the Insurance Company is also jointly liable to pay the compensation. However, taking note of the fact that on the date of the accident, there was no fitness certificate as produced before the Tribunal and has directed to the Insurance Company to pay the compensation and to recover the same from the owner of the vehicle viz., College. Challenging pay and recovery order passed by the Tribunal, the appellant herein/Insurance Company has filed the above appeal.

4. During the pendency of the C.M.A, the owner of the vehicle has preferred cross objection.

5. Be that as it may, the learned counsel for the appellant herein/Insurance Company would contend that driving of the vehicle without fitness certificate is gross violation as under Section 56 of the M.V Act. On a combined reading of provision to Section 56(1) r/w Sections 59 & 60 of the M.V Act, it is seen that a statutory liability, obligation is fixed upon owner of the vehicle not to ply the bus or vehicle on road without fitness certificate. Hence, I find that since the injured is travelling in the bus, he cannot be treat as a third party and consequently, pay and recovery does not arises in the factual circumstances.

6. Further contended that the injured and the owner of the vehicle are having employer and employee relationship and hence, M.C.O.P case does not arise before the Tribunal, it has to go before the workman compensation. Hence, pay and recovery cannot be pressed into service.

7. Per contra, Cross Objector/Management/owner of the bus would contend that he has paid necessary fee for the renewal of the Fitness Certificate and subsequently, Fitness Certificate also renewed from the date of the closure and hence, finding rendered by the Motor Accidents Claims Tribunal is to be vacated.

8. The leaned counsel for the claimant made his submission that the compensation award is less and hence prayed for enhancement of compensation.

9. The appellant/Insurance Company has preferred this appeal on the ground that for want of non possession of Fitness Certificate is violation of the terms of the policy condition and hence the Tribunal ought not to have awarded pay and recovery.

10. The factum of the accident the manner of the accident and rash and negligent on the part of the driver of the college

Bus are not in dispute and hence finding rendered by the Tribunal are hereby confirmed.

11. On perusal of the documentary evidence filed before the Tribunal coupled with the oral evidence of R.W.1, I find that the second respondent herein is the employer of his driver and for the tortious acts of his employee, the second respondent herein is liable under the principle of vicarious liability. The college bus was insured with the appellant-insurance company for a period between 31.03.2012 and 30.03.2013 as could be seen from Ex.A7 Insurance Policy. As per Ex.P1 F.I.R the date of the accident is 30.10.2012 and therefore the accident has happened during the valid policy period and therefore the appellant-Insurance company by terms and conditions in respect of period of policy is liable to pay the compensation.

12. To disown the liability, the appellant-Insurance company has come forward with specific plea that in view of the violation of one of the policy condition viz., the vehicle should have proper Fitness Certificate before plying on the road. In this regard, R.W.1 was examined and Ex.R1 and Ex.R2 were marked. As per Ex.A9 Motor vehicle's Report, the period of Fitness Certificate is mentioned as 15.09.2011 to 14.09.2012.

13 (a) Admittedly, the accident has taken place on 13.10.2012. So the accident has happened after the expiry of the Fitness Certificate. The second respondent herein, the owner of the College-Bus has failed to renew the same.

(b) Though there was a plea in the cross-objection that subsequently on payment of belated charges, the same was renewed will not rectify the original defect namely want of fitness Certificate on the date of the accident and hence for the purpose of fastening the liability upon the Insurance Company, the Fitness Certificate should be in current on the date of the accident. Any subsequent renewal by payment of penalty charges is only for the purpose of renewal of Fitness Certificate after lapse of time. However, the same will not operate retrospectively to operate the policy of the insurance also and hence on the date of the accident viz., 13.10.2012, there is no Fitness Certificate.

(c) In the absence of any Fitness Certificate, Insurance Company cannot be fastern with liability. It is no doubt true that in respect of the third party, if the vehicle is involved in the accident and third party makes a claim and in the absence of Fitness Certificate, the Insurance Company are directed to make the payment and recovery the same from the owner by invoking the pay and recovery. In the incident case, the injured is travelled as a passenger in the college-bus who is a college professor working in the said college who is the owner of the second respondent-bus and therefore being a passenger in the bus cannot be treated as a third party and hence, the Insurance Company is not liable to make the payment nor on the above facts and circumstances, the principle of pay and recovery can be pressed into the service against the Insurance Company.

14. In this view of the matter the Civil Miscellaneous Appeal filed by the Insurance Company is allowed and the Insurance Company is held to be not liable to make payment.

15. In the cross-objection, the owner of the vehicle namely the second respondent herein has filed cross-objection stating that the subsequent renewal of Fitness Certificate will automatically make the Insurance Company liable cannot be countenance for the reasons stated supra and hence, the cross-objection filed by the second respondent-college has no legs to stand and accordingly, the cross-objection stands dismissed.

16. In the result,

(i) This Civil Miscellaneous Appeal is allowed and the cross-objection is dismissed. No costs.

(ii) The award passed by the Tribunal is hereby modified to the effect that the liability of the insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimant and if any amount is already deposited by the insurance company, it is permitted to withdraw the said amount.

(iii) The second respondent/owner of the vehicle is directed to deposit the entire award amount as fixed by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the first respondent herein/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any, by filing necessary application before the Tribunal.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   (Chief Judicial Magistrate) at Thiruvarur.

2. The Section Officer,
   VR Section, High Court-104.

+1cc to Mr.C.V.Vijayakumar, Advocate, S.R.No.23596
+1cc to Mr.C.Munusamy, Advocate, S.R.No.24338
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.23742

C.M.A.No.1576 of 2015 and
Cros.Obj.No.5 of 2021

CNR(CO)
CS/23/11/2021