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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A.NO.1317 OF 2012

1.Latha

2.Minor Sakthivel

Minor rep. by his guardian/next friend

mother first appellant Latha ... Appellants/Claimants

..Vs..

1.Muthukrishnan

2.M/s.A1 Ajees Agrovat Forms,
No.33, Amman Koil Street,
Chennai.

3.The Branch Manager,
Oriental Insurance Co. Ltd.,
No.36, Nungambakkam,
Chennai-34.

4.Appachi

5.Rani Ammal @ Meenakshi Ammal ... Respondents/Respondents

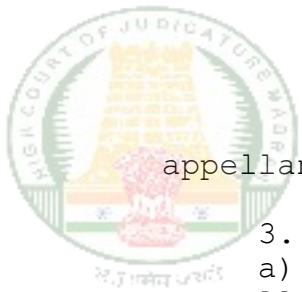
Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree passed by the learned Sub Judge, (MACT), Udumalpet, Coimbatore District in M.C.O.P.No.25 of 2001 dated 03.09.2003.

For Appellants : Mr.V.Jeevagiridaran

For Respondent : No Appearance
Nos.3 to 5

J U D G M E N T

Being aggrieved against the award passed by the learned Sub Judge, (MACT), Udumalpet, Coimbatore District in M.C.O.P.No.25 of 2001 dated 03.09.2003, the claimants have preferred the present appeal on the ground of fastening the liability of payment of the compensation as against the owner of the vehicle.



appellants.

3. The brief facts of the case is as follows:-

a) On 22.11.1999 while the deceased Nandakumar was travelling in the Mini lorry containing hen boxes, a mini lorry bearing registration No.TN-04-T-8186 which was driven by its driver in a rash and negligent manner, applied sudden brake, hit the deceased, at Palani road. Due to which, the deceased was thrown out of the lorry and he succumbed to the injuries on the way to hospital. Hence, the legal heirs of the deceased Nandakumar, had filed the claim petition, claiming a sum of Rs.10 lakhs as compensation for his death.

b) Before the Tribunal, on the side of the claimants, P.W1 to P.W.3 were examined and Exs.P1 to P7 were marked as documents and on the side of the respondent Insurance company, Ex.R1 was produced and RW1 was examined as witness. After considering the oral and documentary evidences, the Tribunal came to the conclusion that the accident had only occurred due to the rash and negligent driving of the driver of the first respondent vehicle and directed the respondents 1 and 2 to pay a sum of Rs.2,71,000/- with interest at the rate of 9% p.a. to the petitioners/claimants and respondents 4 & 5 therein.

4. Aggrieved over the same, the present appeal has been preferred by the appellants/claimants.

5. According to the learned counsel for the appellants that the claimants have filed the claim petition before the Tribunal for a sum of Rs.10 lakhs and the Tribunal has awarded a sum of Rs.2,71,000/- and directed the owner of the vehicle to pay the compensation by stating the reason that the deceased had travelled as an unauthorised passenger in a goods vehicle. The learned counsel contended that even though the deceased is a gratuitous passenger, the Insurance Company is liable to pay the compensation and to recover the same from the owner of the vehicle. In support of his contention, he relied upon the decision of the Hon'ble Apex Court in the case of National Insurance Co., Ltd., Vs Baljit Kaur & Others reported in 2004 (1) CTC 210 (SC), wherein it has held that '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. even though the deceased had travelled as an unauthorised passenger in the goods vehicle, the Insurance Company cannot be absolved from the liability and held that they should pay and recover the same from the owner of the vehicle.



decision of a Hon'ble Division Bench of this Court in the case of Bharati AXA General Insurance Co. Ltd., Rep. by its Manager, Bangalore Versus Aandi & Others reported in 2018 (2) TNMAC 731, where this Court, following the various judgments of the Hon'ble Supreme Court, has elaborately discussed the various aspects, particularly, in regard to fastening of liability and held that the Insurance Company is not liable to pay compensation in case of gratuitous passengers and only the owner of the vehicle is liable to pay the compensation. The relevant portions of the said decision is as follows:-

"31. Section 149 of the Motor Vehicles Act imposes an obligation on the Insurance Company to satisfy the judgments and awards passed against the insured. Sub-section 2 of section 149 provides that the insurer must be heard in a proceeding before the claims Tribunal seeking compensation, it also sets out the defences that are available to the Insurance Company in such claims. One of the defences that is set out in Section 149(2)(a)(i)(c) is the purpose for which the vehicle was used at the time of the accident. Under the said provision it is open to the Insurance Company to plead and prove that the vehicle was used for the purpose other than which it was permitted and extricate itself from the liability to pay compensation.

....
49.

We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj v. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorised passenger in a goods vehicle, do not support the said conclusion.

50.

In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. v. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. v. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others v. 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 unauthorised 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 v. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance



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Company would be liable to pay the compensation even in respect of an unauthorised 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 v. Asha Rani and others and National Insurance Company Ltd., v. 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 pro of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India. 52.

In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed."

7. The aforesaid decision is self explanatory. In the light of the aforesaid decision, the award passed by the Tribunal warrants no interference. Consequently, the Civil Miscellaneous Appeal filed by the appellants/claimants is liable to be dismissed.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. It is open to the claimants, to proceed as against the owner of the vehicle for recovery of the compensation amount, if not already deposited. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar



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To

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1.The Sub Judge,
(The Motor Accident Claims Tribunal),
Udumalpet, Coimbatore District.

C.M.A.No.1317 of 2012

NMI (CO)
GMY (06/09/2021)