IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NOS.2509 & 2510 OF 2011
AND
MP.NOS.1 & 1 OF 2011

CMA.No.2509 of 2011

National Insurance Co. Ltd.,
Divisional Office, 60, Perunthurai Road,
Erode-11, Erode District ... Appellant/ 2nd Respondent

Versus

1.Rani 1st Respondent/ Petitioner

2.P.Shanmugavadivel ... 2nd Respondent/ 1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree made in M.C.O.P.No.32 of 2004 by common judgment dated 05.02.2007 made in MCOP.No.32 of 2004 and MCOP.No.33 of 2004 on the file of Motor Accident Claims Tribunal, by Subordinate Judge at Mettur.

For Appellant : Mr.K.Padmanabhan

For Respondents
For R1 : Mr.N.Sudarsan
R2 : Not ready in notice

CMA.No.2510 of 2011

National Insurance Co. Ltd.,
Divisional Office, 60, Perunthurai Road,
Erode-11, Erode District ... Appellant/ 2nd Respondent

Versus

1.Muthu 1st Respondent/ Petitioner

2.P.Shanmugavadivel ... 2nd Respondent/ 1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree made in M.C.O.P.No.33 of 2004 by common judgment dated 05.02.2007 made in MCOP.No.32 of 2004 and MCOP.No.33 of 2004 on the file of Motor Accident Claims Tribunal, by Subordinate Judge at Mettur.

For Appellant : Mr.K.Padmanabhan

For Respondents
For R1 : Mr.N.Sudarsan
R2 : Not ready in notice

COMMON JUDGMENT

These appeals have been laid as against the decree made in M.C.O.P.Nos.32 & 33 of 2004 dated 05.02.2007 on the file of Motor Accident Claims Tribunal, Subordinate Judge at Mettur.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is on 31.10.2003, when the claimants and others were travelling with their goods in a Minidor goods vehicle owned by the first respondent insured with the second respondent, its driver cum owner had driven the vehicle in a rash and negligent manner and caused accident, due to which the claimants sustained injuries all over their body. Therefore, the claimants filed claim petitions.

4. Resisting the same, the second respondent filed counter stating that the claimants were travelling in the goods vehicle owned by the first respondent. The accident took place only on the rash negligent driving of the first respondent. Therefore, the second respondent is not held to be liable for any compensation. The first respondent violated terms and conditions of the insurance policy, since the vehicle which was driven by the claimants is a goods carriage vehicle and sought for dismissal of the claim petitions.

5. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.11. On the side of the respondents, they examined R.W.1 and marked Ex.R.1. On the basis of the evidence available on records and also considering the

submission made by the learned counsel appearing on either side, the Tribunal fixed negligence on the part of the first respondent and awarded compensation. Though the Tribunal fixed liability on the first respondent, the second respondent is directed to pay compensation and recover the same from the first respondent. Aggrieved by the same, the second respondent came forward with the present appeals.

6. The learned counsel appearing for the appellant / insurance company submits that though the Tribunal fastened liability on the first respondent, directed the second respondent to pay compensation with liberty to recover the same from the first respondent. Admittedly, the claimants were travelling in a goods carriage vehicle and thereby the first respondent violated terms and conditions of the policy, which is marked as Ex.R1. Therefore, the Tribunal ought not to have directed the second respondent to pay compensation with liberty to recover the same from the first respondent.

7. Per contra, the learned counsel appearing for the claimants submits that the claimants are very poor and even before the Tribunal the owner of the vehicle remained exparte. Even here, no notice was served on the owner of the vehicle. Therefore, the Tribunal rightly directed the second respondent to pay the compensation and recover the same from the first respondent and prayed for dismissal of the present appeals.

8. Heard Mr.K.Padmanabhan, learned counsel appearing for the appellant and Mr.N.Sudarsan, learned counsel appearing for the first respondents herein.

9. The only point raised by the learned counsel for the second respondent / insurance company is that the claimants were travelling in a goods vehicle and they were nearly 14 persons travelling on payment of Rs.4/- for each head as charge for their travel with their respective goods. Admittedly, the policy does not cover any unauthorised passenger who travels in a goods vehicle. It is relevant to rely upon the judgment in the case of Bharati Axa General Insurance Co. Ltd Vs. Aandi and others reported in (2018) 2 TN MAC 731, wherein it is held as follows:

> 24. We have considered the rival submissions. Section 147 of the Motor Vehicles Act, spells out the requirements of the motor insurance policy as well as the limits of liability. While Section 147(1) deals with the matters which will have to be covered by the policy proviso to Section 147(1) sets out exemptions. Section 147(1)(b) which requires the policy to insure the person or classes of persons specified in the policy to the extent specified in sub-Section 2 against

any liability which may be incurred by him in respect of the death or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

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.

27. The Hon'ble Supreme Court has repeatedly considered the effect of these provisions in various judgments. It should be pointed out at this juncture, Section 147(1)(b)(i), which read as follows:-

"(i) Against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place." was amended by Act 54 of 1994 with effect from 14.11.1994 to read as follows:-

"(i) Against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including the owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

28. The addition of the words "including the owner of the goods or his authorised representative carried in the vehicle" introduced a class of persons who were otherwise not required to be covered statutorily. Therefore, it is only after 14.11.1994, the owner of the goods or the authorised representative of such owner were required to be covered by the Insurance Companies and not before that.

29. Therefore, a passenger in a goods vehicle even if he was the owner of the goods or the authorised representative of the owner of the goods was not covered prior to 14.11.1994 or there was no statutory requirement to cover such person. A close reading of Section 147(1) would show that a policy of insurance covering risks relating to motor accidents are required to cover the persons or classes of persons specified in the policy, against any liability incurred by him in respect of death or bodily injury or damage to any property of a

1) third party.
2) the owner of the goods or his authorised representative carried in a goods vehicle.
3) against the death or bodily injury to the passenger of a public service vehicle.

30. Sub-Section 2 of Section 147 lays down the limits of liability. Sub-Section 5 of Section 147 is a non-abstanti clause, which makes the insurers liable to indemnify the person or class of persons specified in the policy, in respect of the liability covered by the policy.

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.

10. Therefore, the Tribunal ought not to have directed the second respondent to pay compensation with liberty to recover the same from the first respondent and this Court is inclined to allow both the appeals only in respect of question of liability

of the second respondent to pay compensation.

11. Accordingly, the Civil Miscellaneous Appeals stand allowed as follows:

(i) The award passed by the Tribunal are affirmed and there will be awards only as against the first respondents herein.

(ii) The second respondent is permitted to withdraw the amount already deposited before the Tribunal, if any, in pursuant to the award passed by the Tribunal by filing proper application.

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok

To

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

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

C.M.A.Nos.2509 & 2510 of 2011

SSV(CO)
PM/10/11/2021