IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.308 OF 2015

1. Rajamanickam
2. Chinthamani ... Appellants/Petitioners

Versus

1. Akilan
2. The Bajaj Allianz General Insurance Company Ltd.,
   5th Floor, Prince Tower
   25/26, College Road,
   Nungambakkam, Chennai - 600 006.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow this Civil Miscellaneous Appeal and to set aside the order and decreetal order dated 25.09.2014 made in M.A.C.T.O.P.No.620 of 2009 on the file of the Court of the Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Villupuram.

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| For Appellants | : | Mr.T.Dhanyakumar |
| For Respondents | : | Mr.J.Michael Visuvasam for R2<br>R1 - Served - No appearance |

JUDGMENT

This appeal has been filed by the claimants aggrieved by the exoneration of the liability of the second respondent/ Insurance Company by the Tribunal under the impugned award dated 25.09.2014 passed by the the Motor Accident Claims Tribunal, Principal District Judge, Villupuram in M.A.C.T.O.P. No.620 of 2009.

2. The Tribunal under the impugned award has exonerated the second respondent / Insurance Company from any liability on the ground that the deceased Narasammal was an unauthorised passenger in the insured vehicle and the appellants / claimants are not entitled for compensation.

3. The appellants are the claimants who are the Legal Representatives and dependants of the deceased have preferred claim before the Motor Accidents Claims Tribunal.

4. The Tribunal under the award after exonerating the liability of the second respondent / Insurance Company directed the first respondent to pay the appellants / claimants a compensation of Rs.4,08,000/- together with interests and costs.

5. The appellants have challenged the impugned award on the ground that despite the fact that the second respondent before the Tribunal has not pleaded that the deceased was travelling as an unauthorised passenger, the Tribunal has erred in exonerating the liability of the second respondent / Insurance Company. According to them, the Tribunal failed to understand the nature of the accident viz., that the deceased while getting down from the insured lorry after the sugarcane was partly loaded, the driver of the lorry drove the vehicle in a rash and negligent manner which resulted in the deceased falling down from the vehicle resulting in her death.

6. Heard Mr.T. Dhanyakumar, learned counsel for the appellants / claimants and Mr.J. Michael Visuvasam, learned counsel for the second respondent / Insurance Company. Despite service of notice, there is no representation on behalf of the 1$^{st}$ respondent.

7. The learned counsel for the appellants drew the attention of this Court to the claim petition filed before the Tribunal and in particular, he referred to paragraph No.23 of the claim petition, which narrates as to how the accident happened, which resulted in the death of Narasammal. According to him, Narasammal was not an unauthorised passenger in the insured vehicle and she died while getting down from the lorry, after loading sugarcane into the said lorry and only due to the rash and negligent driving by the driver of the insured vehicle, she fell down and was run over by the lorry, which resulted in her death.

8. The learned counsel for the appellants drew the attention of this Court to the impugned award and in particular, he referred to the discussion with regard to point No.2 made by the Tribunal and would submit that only due to the rash and negligent driving by the driver of the insured lorry, the accident had happened and the deceased was not an unauthorised passenger.

9. The learned counsel for the appellants would also plead before this Court that, since it is a policy violation as held by the Tribunal, the second respondent / Insurance Company ought

to have been directed to pay the compensation to the appellants / claimants and thereafter recover the same from the owner of the vehicle (insured). However, according to him, erroneously even that relief was not granted to the appellants / claimants.

10. Per contra, the learned counsel for the second respondent / Insurance Company would submit that the deceased was an unauthorised passenger in a goods vehicle and there was no insurance coverage for any unauthorised passenger falling within the purview of Section 147 of the Motor Vehicles Act.

11. The learned counsel for the second respondent / Insurance Company also drew the attention of this Court to the claim petition filed by the appellants / claimants and in particular, he referred to Sl. Nos.4 and 5 therein and would submit that the appellants / claimants have themselves pleaded that the deceased was a sugarcane cutting lady and loading worker and was a self employed person. Hence, according to him, she will not fall under Section 147 of the Motor Vehicles Act and the appellants / claimants, who are her Legal Representatives and dependants are not entitled for compensation from the second respondent / Insurance Company.

12. The learned counsel for the second respondent / Insurance Company then drew the attention of this Court to the counter affidavit by the second respondent before Tribunal and in particular, he referred to para Nos.12 and 13, where the second respondent has categorically pleaded that the deceased was an unauthorised passenger in a goods vehicle and not entitled for any coverage in view of the fact that no additional premium was collected by the second respondent / Insurance Company from the owner of the vehicle (Insured).

13. He also drew the attention of this Court that under Section 147 of the Motor Vehicles Act the Insurance Company is not liable to provide insurance coverage for unauthorised passengers in a goods vehicle. He would submit that since there is no insurance coverage, pay and recovery cannot also be granted and rightly the same has not been granted by the Tribunal.

14. The learned counsel for the second respondent / Insurance Company also drew the attention of this Court to the FIR, which was marked as Ex.P1 before the Tribunal. He would submit the the complaint was given by the father of the deceased Narasammal based on which, the FIR was registered. He would submit that even according to the FIR, the deceased was travelling along with 20 other passengers in the same goods vehicle when the accident happened. According to him, the

Tribunal has rightly exonerated the second respondent / Insurance Company from any liability since the deceased was an unauthorised passenger.

15. This Court has considered the materials and evidence available on record as well as the submissions made by the respective counsels.

Discussion :

16. As rightly contended by the learned counsel for the second respondent / Insurance Company, the evidence available on record will clearly prove that the deceased Narasammal was an unauthorised passenger in a goods vehicle. The second respondent even in their counter have pleaded that the second respondent is an unauthorised passenger in the insured goods vehicle and does not fall within any of the parameters as prescribed under Section 147 of the Motor Vehicles Act. The FIR given by the father of the deceased, which was marked as Ex.P1 before the Tribunal will clearly reveal that the deceased was travelling along with other persons in the insured goods vehicle when the accident had occurred, which resulted in the death of Narasammal. A consistent defence has been taken by the second respondent / Insurance Company before the Tribunal that they are not liable to compensate the appellants /claimants in view of the fact that the deceased was an unauthorised passenger in a goods vehicle.

17. Section 147 (1) (b) (i) makes it clear that the insurer is liable to compensate only when the deceased has travelled as the owner of the goods or the authorised representative of the owner of the goods or an employee of the owner of the vehicle (insured).

18. In the case on hand, as seen from the pleadings of the appellants / claimants before the Tribunal as well as the FIR, it is clear that the deceased did not fall under any of the aforementioned categories, but has travelled in the vehicle as a gratuitous passenger in the goods vehicle and therefore, the appellants / claimants are not entitled for any compensation from the second respondent / Insurance Company. Further, the Doctrine of pay and recover will apply only when if the appellants / claimants are entitled for compensation from the Insurance Company and there is a policy violation. In the case on hand, the appellants / claimants are not entitled for compensation as the deceased does not fall within any of the categories prescribed under Section 147 of the Motor vehicles Act. Hence, the principle of pay and recover cannot be applied to the case on hand.

19. The Tribunal has rightly considered the decision of this Court in the case of United India Insurance Co. Ltd., Perambalur vs. Sheela reported in 2012 (1) TN MAC 89 and rightly exonerated the second respondent / Insurance Company from any liability.

20. For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal. Accordingly, the order made in M.A.C.T.O.P. No.620 of 2009, dated 25.09.2014 passed by the Principal District Judge / Motor Vehicle Accidents Claims Tribunal, Villupuram is confirmed by this Court and the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Deputy Registrar(AD II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Principal District Judge
Motor Vehicle Accidents Claims Tribunal,
Villupuram.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.25472
+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.24877

C.M.A.No.308 of 2015

NK(CO)
CS/29/10/2021