IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.914 of 2011
and M.P.No.1 of 2011

The Divisional Manager,
United India Insurance Company Limited,
Nethaji Road, Cuddalore. ... Appellant

Versus

1. Pandurangan
2. Dakshinamoorthy ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 27.06.2006 made in M.C.O.P.No.198 of 2004 on the file of the Motor Accident Claims Tribunal, (I Additional Subordinate Court) Cuddalore.

For Appellant : Mr.K.Padmanaban

For Respondents : No appearance

J U D G M E N T

This appeal has been preferred by the second respondent/ Insurance company, aggrieved by the order dated 27.06.2006 made in M.C.O.P.No.198 of 2004 on the file of the Motor Accident Claims Tribunal, (I Additional Subordinate Court) Cuddalore, thereby allowing the petition for compensation.

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 petitioner is that on 21.08.2003, he loaded vegetables in the Koyambedu market and traveled in mini van belonged to the first respondent. It was proceeding to Panruti. When the van was nearing opposite to Vaigai hotel on the national highway, near Chengalpattu, a bullock cart crossed the road as such, the driver of the first respondent van applied the break and turned around backside and capsized. Due to which, the petitioner sustained compound fracture over left hand,

grievous injuries over left knee, left shoulder, forehead and multiple grievous injuries all over the body. Immediately, he was taken to the Government Medical College Hospital, Chengalpattu. Thereafter he was admitted to the Government Hospital, Chennai and thereafter admitted to the private nursing home at Cuddalore. Due to the injuries sustained by him, he is not able to continue his avocation. Hence he filed petition for compensation claiming a sum of Rs.3,00,000/-.

4. Resisting the same the second respondent filed counter and denied all the allegations as averred in the claim petition. Further stated that the accident did not occur due to the rash and negligent driving of the first respondent's driver. The petitioner is not a load-man and he was not engaged by the first respondent. When the vegetables loaded with the vehicle, the job of the petitioner is over and as such he is only an unauthorized passenger. It is clear violation of the terms of the policy, as such the second respondent is not liable to pay any compensation and sought for dismissal of the claim petition.

5. On the side of the petitioner, he examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.17. On the side of the respondents, R.W.1 was examined and no documents were marked. 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 found that on the first respondent driver's negligence alone, the accident was took place and awarded a sum of Rs.2,14,050/- as compensation payable by the respondents jointly and severely with interest at the rate of 7.5% per annum from the date of claim petition till the deposit of the award amount. Aggrieved by the same, the second respondent preferred the present appeal.

6. The learned counsel appearing for the appellant/second respondent would submit that the petitioner is not a load-man and even assuming that he is a load-man, after loading the vegetables in the vehicle his job is over as such, he is only an unauthorized passenger. It is clear violation of terms and conditions of the policy. The petitioner can claim only under the statue of the policy. In the case on hand, the petitioner is not at all entitled for compensation under statue and as such no policy is covered to pay compensation to the petitioner. There is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle.

6.1. He further submitted that insofar as the quantum is concerned, without any material, the Tribunal had taken 30% of permanent disability and applied multiplier method to award compensation. Even according to the petitioner his age was 40 years at the time of accident, whereas the Tribunal had taken 38 years as his age and awarded compensation. In support of his contention, he relied upon the judgment reported in 2012 (1) TANMAC 517 in the case of Branch Manager, Oriental Insurance Co. Ltd., Vs. Balaraman, which reads as follows :-

> "23. It is well settled that when the goods carriage vehicle is being used for the purpose of transporting passengers, it would amount to a violation of policy condition and in that event, the insurance company cannot be made liable to pay the compensation amount. This position is settled by series of decision of the Honourable Supreme Court, referred to supra. Therefore, in the facts and circumstance of the case on hand, it is only the owner of the vehicle, who is liable to pay the compensation amount to the claimants, as determined by the Court below and the insurance company is not liable to pay the compensation amount. As far as quantum of compensation is concerned, it was not questioned by the owner of the vehicle in this batch of appeals. Therefore, this Court is not inclined to go into the correctness or otherwise of the quantum of compensation awarded by the Court below. Accordingly, the owner of the vehicle is directed to deposit the compensation amount, as determined by the Court below, with accrued interest, within a period of eight weeks from the date of receipt of a copy of this judgment."

6.2. He also relied upon the judgment reported in 2018 (2) TANMAC 731 in the case of Bharati AXA General Insurance Co. Ltd., Vs. Anadi and ors, in which the Hon'ble Division Bench of this Court held as follows :-

> "50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. 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 unauthorized 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 Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized 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 Vs. Asha Rani and others and National Insurance Company Ltd., Vs. 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."

Therefore, he prayed for dismissal of the award passed by the Tribunal.

7. Heard Mr.K.Padmanaban, learned counsel appearing for the appellant/second respondent. No one is appeared on behalf of the respondents/petitioner & first respondent.

8. The learned counsel appearing for the appellant/second respondent raised grounds in this appeal on two floods. The first one is that the second respondent is not liable to pay any compensation, since the petitioner is not covered with the policy. The Second one is questioning the quantum of compensation awarded by the Tribunal. Admittedly, the petitioner was traveled in the mini lorry after loading the vegetables and proceeded to Panruti. While the vehicle was crossing the Chengalpattu, due to clear negligence of the first respondent's driver, the accident took place due to which, the petitioner sustained grievous injuries.

9. Further, the petitioner is none other than the load-man and to unload the vegetables, he also traveled in the said vehicle. That apart, when the petitioner traveled with goods, he cannot be construed as unauthorized passenger. Even though a permit issued under Section 66 of the Motor Vehicle Act is for carrying goods only, there is scope/permission/need to carry passengers also at times, they may be either loadmen or workmen or even the owners of the goods. Therefore all the persons traveled in a goods vehicle would not become unauthorized passengers. Therefore, the judgments cited by the learned counsel appearing for the second respondent are not helpful to the case on hand.

10. Insofar as the quantum is concerned, the Tribunal had taken the salary of the petitioner is Rs.3000/- as monthly income. Though P.W.3, who assessed the disability of the petitioner as 45% of permanent disability, the Tribunal had taken only 30% as permanent disability and applied the multiplier of 16 for the age of 38 years. Though the petitioner has stated his age is 40 years old, on perusal of the wound certificate, the age of the petitioner is mentioned as 38 years. Therefore, the Tribunal rightly had taken the multiplier of 16 and awarded compensation. Therefore, nothing warrant to interfere with the judgment and decree passed by the Tribunal by this Court.

11. In fine, the award dated 27.06.2006 passed by the Motor Accident Claims Tribunal, (I Additional Subordinate Court) Cuddalore, in M.C.O.P.No.198 of 2004 is hereby confirmed and the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts
To

The I Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.

Copy to

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

+2cc to M/s.A.N.Viswanathan Rao, Advocate Sr.22512

C.M.A.No.914 of 2011
and M.P.No.1 of 2011

vsn -II[co]
srg 07/10/2021