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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.2731 to 2734 of 2013 and
MP.Nos.1, 1, 1 & 1 of 2013

CMA.No.2731 of 2013

The United India Insurance Co. Ltd.,
Divisional Officer - 012 000
No.75-C, MTH Road,
Ambattur

... Appellant/2nd Respondent

Versus

1.Thulukanammal
2.K.Muthusamy
3.Munusamy

... Respondent/ Petitioner
...2nd & 3rd Respondent/1st Respondent and
3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.01.2013 made in OP.No.400 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge), Ponneri.

CMA.No.2732 of 2013

The United India Insurance Co. Ltd.,
Divisional Officer - 012 000
No.75-C, MTH Road,
Ambattur

... Appellant/2nd Respondent

Versus

1.Muniyammal
2.K.Muthusamy
3.Munusamy

..1st Respondent/ Petitioner
...2nd & 3rd Respondents/1st ,3rd Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.01.2013 made in OP.No.401 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge), Ponneri.



CMA.No.2733 of 2013

The United India Insurance Co. Ltd.,
Divisional Officer - 012 000
No.75-C, MTH Road,
Ambattur

... Appellant/2nd Respondent

Versus

1.Mohan
2.K.Muthusamy
3.Munusamy

...1st Respondent/ Petitioner

...2nd & 3rd Respondent/1st and 3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.01.2013 made in OP.No.402 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge), Ponneri.

CMA.No.2734 of 2013

The United India Insurance Co. Ltd.,
Divisional Officer - 012 000
No.75-C, MTH Road,
Ambattur

... Appellant/2nd Respondent

Versus

1.Rani
2.K.Muthusamy
3.Munusamy

...1st Respondent/ Petitioner

...2nd & 3rd Respondent/1st and 3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.01.2013 made in OP.No.411 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge), Ponneri.

For Appellant in all CMA's : Mr.D.Bhaskaran

For Respondents in all CMA's : No Appearance

COMMON JUDGMENT

These appeals have been laid as against award and decree dated 07.01.2013 made in OP.Nos.400, 401, 402 & 411 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge), Ponneri.

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



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3. The case of the claimants is that on 25.07.2006, while they were travelling in an auto, the driver of the auto drove the auto in a rash and negligent manner and dashed the backside of the bus. Due to the accident, the claimants sustained grievous injuries. All the claimants filed separate claim petitions respectively.

4. Resisting the same, the second respondent filed counter stating that the claimants are unauthorised passengers. The auto is meant only for goods, and is goods carriage vehicle i.e. three wheeler load auto and it is not a share auto. As per the registration certificate of the load auto, the seating capacity is only two including the driver. Whereas, the claimants were travelling in the auto as unauthorised passengers. Therefore, the second respondent is not held to be liable for any compensation. The second respondent also disputed the injuries sustained by the respective claimants since no accident register was produced where they got admitted for treatment and sought for dismissal of the claim petitions.

5. All the claim petitions were clubbed together and jointly tried. On the side of the claimants, they examined P.W.1 to P.W.5 and marked Ex.P.1 to Ex.P.9. On the side of the respondents, they examined R.W.1 and marked Ex.R.1 to Ex.R.4. On the basis of the evidence available on records and also considering the submissions made by the learned counsel appearing on either side, the Tribunal fastened entire liability on the second respondent and awarded compensation. Aggrieved by the same, the second respondent came forward with the present appeals questioning the liability.

6. The learned counsel appearing for the appellant would submit that under Section 147 of Motor Vehicles Act, the second respondent is not statutorily required to cover liability in respect of passenger in a goods vehicle. All the claimants were unauthorised passengers and the vehicle insured with the second respondent is a goods vehicle. The registration certificate of the goods vehicle is marked as Ex.P4 and Ex.R3. The insurance policy is marked as Ex.R4. The registration certificate of the vehicle defined as goods vehicle and the insurance policy covers only for two persons including the driver. Therefore, the second respondent is not at all liable to pay any compensation. He further submitted that as per Section 147 of MV Act, the policy does not cover any person except two persons including the driver. Therefore, there is no contractual liability for the second respondent to pay any compensation. If at all any violation in the policy, as provided under Section 149 of MV Act, the insurance company may be directed to pay and recover the same from the owner of the vehicle. Here, policy itself does not cover unauthorised passengers travelling in a goods vehicle and as such the second respondent is not at all liable to pay



any compensation as directed by the Tribunal.

7. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant. Though notice was served and names are also printed in the cause list, no one appeared on behalf of the respondents before this Court in person or through pleader.

8. Admittedly, the claimants were travelling in the goods auto. The accident happened only due to rash and negligent driving of the driver of the first respondent's vehicle, which is insured with the second respondent. The registration certificate of the vehicle which is marked as Ex.R3 revealed that the auto was registered as LMV goods vehicle. On perusal of the insurance policy which is marked as Ex.R4 revealed that it covers only two persons including the driver. Whereas, four persons were travelling in the goods auto and met with accident and sustained injuries. Though the Tribunal exonerated the second respondent from the liability to pay any compensation, has directed the second respondent to pay compensation and recover the same from the owner of the vehicle. It is also made clear that there is no breach of policy conditions. But the second respondent has no contractual liability since the policy itself does not cover unauthorised passengers as required under Section 147 of MV Act. Therefore, there is neither contractual liability nor statutory liability for the second respondent to indemnify the insured who has violated the policy conditions by accommodating unauthorised passengers in the goods auto. Under Section 147 of MV Act, the insurance company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle, unless such passenger is owner or agent of the owner of the goods accompanying such goods in the goods vehicle concerned. In this regard, 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:

47. The next decision relied upon by Mr. N. Vijayaraghavan in support of his contention that this Court has ample power to direct the Insurance Company to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger in a goods vehicle is National Insurance Company Ltd. v. Saju P. Paul reported in (2013) 2 SCC 41. There again the Hon'ble Supreme Court held that the High court was not right in directing the Insurance Company to pay the compensation. In fact, the Hon'ble Supreme Court while dealing with the liability of the Insurance Company to pay the compensation for a spare driver who was travelling in a goods vehicle observed as follows:-

"17. The High Court misconstrued the proviso following sub-Section (1) of Section 147 of the 1988



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Act. What is contemplated by the proviso to Section 147 (1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in the cabin would not make his case different from any other gratuitous passenger.

18. The impugned judgment is founded on a misconstruction of Section 147. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.

48. However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd. v. Saju P. Paul reported in (2013) 2 SCC 41 cannot also be taken as a precedent, as contended by Mr. N. Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.

49. Coming to the latest judgment viz., Shivaraj v. Rajendra dated 05.09.2018, made in Civil Appeal Nos. 8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company v. Asha Rani or National Insurance Company Ltd. v. Baljit Kaur were not brought to the notice of the two Judge Bench which decided Shivaraj v. Rajendra referred to supra.

51. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. v. Swam Singh reported in (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani v. National Insurance Co. Ltd. reported



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in 2018 (9) Scale 310 and Manuara Khatun v. Rajesh Kumar Singh 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 v. Rajendra 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 v. Asha Rani and National Insurance Company Ltd. v. Baljit Kaur 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.

The Hon'ble Division Bench of this Court referred catena of judgments of the Hon'ble Supreme Court of India and held that the Tribunal was not right in directing the insurance company to pay the compensation and given liberty to recover the same from the owner. That apart, the intention of the parliament was that the words 'any person' occurring in Section 147 of MV Act will not cover all the persons who are travelling in a goods carriage in any capacity whatsoever. The Hon'ble Supreme Court of India also held that the goods vehicle in question was used as passenger vehicle and the insurance company cannot be statutorily made liable.

9. In fine, all the civil miscellaneous appeals stand allowed only in respect of the question of liability of the appellant / second respondent to pay the compensation. The quantum of compensation is affirmed and there will be award only as against the first respondent i.e. the owner of the vehicle and the award as against the appellant / second respondent stands set aside. The appellant / second respondent is permitted to withdraw the amount already deposited, if any, before the Tribunal together with interest accrued thereon. The claimants are at liberty to recover the award amount from the first respondent i.e. the owner of the vehicle in accordance with law. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar



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To

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

Copy to:
The Section Officer,
VR Section,
High Court, Madras

C.M.A.Nos.2731 to 2734 of 2013

PP (CO)
A.SK (24.11.2021)