IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3772 of 2012

and
M.P.No.1 of 2012

The Branch Manager,
The New India Assurance Co. Ltd.
Vellore. ... Appellant/2nd Respondent

..Vs..

1. Rukku
2. Minor Tirupathi
3. Minor Suveenkumar
4. Subramani ... Respondents/Petitioners
5. P.Sasikumar ... Respondent-5/ 1st Respondent

(Minors rep. by their mother & next friend, 1st Respondent)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.06.2012 made in M.C.O.P.No.124 of 2011 on the file of Additional District & Sessions Court No.3 (Motor Accidents Claims Tribunal), Tirupathur.

For Appellant : Mr.M.K.Krishnamoorthy

For Respondents 1 to 4 : Mr.P.A.Sudesh Kumar

For Respondent No.5 : No appearance

JUDGMENT

Brief facts of the claimant's case is as follows:

On 2.1.2009 at about 5.30 p.m., the deceased Selvam drove the tempo truck bearing registration No.T.N.31-H-2112 from Elahiri hill proceeding towards Ponneri in a rash and negligent manner and due to over speed, the vehicle capsized after hitting parapet wall and thereby caused accident, resulting in the petitioner sustained fatal injuries and died on the spot. The deceased was taken to Government hospital where he was declared dead. A case has been registered in Cr.No.1 of 2009 under Section 279, 337 and 304(A) of I.P.C. by the Elahiri hills police station. The legal heirs of the deceased have filed a claim petition before the Tribunal, claiming Rs.8,00,000/- from the appellant and the 5th respondent being the insurer and owner of the offending vehicle.

2 On the side of the petitioner, P.W.1 & 2 were examined and Ex.P1 to P8 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 was marked.

3 The Tribunal, based on the oral and documentary evidence, held that the appellant Insurance Company liable to pay compensation to the claimant and awarded Rs.6,28,500/- to the claimant along with interest at the rate of 7.5% p.a from the date of petition till realization.

4. Challenging the award passed by the tribunal fastening liability against the appellant /Insurance Company, the present appeal has been filed on the ground that the policy conditions were violated by carrying the unauthorised passengers.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondent/claimant and perused the materials available on record.

6. The short point involved in the present appeal is that whether the Insurance Company is liable to pay compensation to the claimant.

7 According to the learned counsel appearing for the appellant/ Insurance Company, admittedly, 20 persons including the deceased were travelled as unauthorised passengers in the goods vehicle and therefore, policy conditions of the insured vehicle were violated and therefore, the appellant/insurance company is not liable to pay compensation. Tribunal has failed to appreciate the case of the appellant/Insurance company and erroneously held that the appellant/ Insurance company liable to pay compensation. It is not proved by the claimant that 20 persons who were travelled in the offending vehicle are covered under the policy of the offending vehicle or premium has been paid for 20 persons to travel in the offending vehicle. The tribunal has failed to consider the fact that the policy conditions of the insured vehicle were violated. In support of his contention, he placed reliance on the judgment of this

Court in the case of BHARATI AXA GENERAL INSURANCE CO. LTD. VS. AANDI AND TWO OTHERS .

8. The learned counsel appearing for the respondent/claimant would submit that the tribunal based on the oral and documentary evidence, rightly held that the Insurance Company is liable to pay compensation. Since the driver of the offending vehicle have valid driving licence and policy of the said vehicle is in force, the tribunal has rightly held that the appellant/Insurance Company is liable to pay compensation. The finding of the tribunal is against the offending vehicle which was insured with the appellant/Insurance Company. Therefore, liability as fixed against the Insurer is perfectly correct. Further, the learned counsel appearing for the first respondent/ claimant has placed reliance on the Policy Schedule wherein it is stated as follows:

ADD: LL TO NFPP – INCLUDING EMPLOYEES-IMT-37 - 75/-

Therefore, according to the learned counsel appearing for the respondent/ claimant, premium was paid to the Non-fare Paying Passenger and therefore, the appellant/Insurance Company is liable to indemnify the amount paid towards Non-Fare Paying Passenger.

9. The learned counsel appearing for the appellant/Insurance submitted that as per the tariff for Non-fare Paying Passenger, 6 persons only permitted to travel in the insured vehicle. Whereas, in the instant case, 20 persons were unauthorisedly travelled in the goods vehicle and therefore, overload in the offending vehicle is the cause of accident. In view of the violation of policy conditions and also premium was not paid in sofar as unauthorised passengers and therefore, the Insurance Company is not liable to pay compensation. In support of his contention, the learned counsel appearing for the appellant/Insurance company relied on the decision of the Division Bench of this Court in the case of BHARATI AXA GENERAL INSURANCE CO. LTD. VS. AANDI AND TWO OTHERS REPORTED IN 2018 (2) TN MAC 731 (DB) wherein the Division Bench of this Court held as under:

> ''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.''

The aforesaid decision squarely applies to the facts of the instant case.

10. On the other hand, the learned counsel appearing for the respondent/claimant also relied on the decision of this Court in the case of NATIONAL INSURANCE CO. LTD. VS. S.IBRAHIM reported in 2011 (1) TN MAC 587 wherein this Court held as under:

''15. When we analyse the case in C.M.A No. 778 of 2008, concerning the death of Palani, no doubt, in that case also P.W.I, the father of the deceased would contend that he was a +2 student and only in the vacation, he indulged in the business. It is further deposed that he continued his studies and his mark sheet also would prove that during the relevant point of time, he continued to be a student and there is no plausible explanation given by P.W.I that he was the owner of the goods. At the same time, P.W.2, the other coolie who was also an eye-witness and travelling in the vehicle deposed that the deceased was travelling in the vehicle as the owner or the person accompanying the goods. The fact remains that this person was accompanying the goods, namely, the chick and hen. When we analyse this aspect, the learned counsel for the Respondents/Claimants pointed out that under the Policy a sum of Rs. 75/- has been received as premium under the heading NFPP-1 which means Non-Fare Paying Passenger-1. Therefore, the Policy covers in respect of any death or accident for a person who is travelling in a vehicle, even though he was not the owner of the goods but as a non-fare paying passenger.''

11. This Court also held that the policy would cover in respect of any death of accident for a person who is travelling in vehicle, even though he was not the owner of the goods but as a non-fare paying passenger. However, the aforesaid decision would not apply to the facts of the case in hand. In the aforesaid case, only one person viz., deceased accompanying the goods as an agent or authorised by the owner of the goods. In the case on hand, 20 persons have travelled in the goods vehicle viz., tempo truck bearing registration No.T.N-31-H-2112, as unauthorised passengers. Admittedly, the offending insured vehicle is a goods vehicle. To that effect, R.W.1 before the tribunal has stated that 20 persons have travelled in the offending vehicle and the same was not denied on the side of the respondent/claimant. Therefore, the deceased would not comes under Non-Fare Paying Passenger as the deceased was not travelled as agent of the goods, whereas he travelled as unauthorised passenger. Policy Schedule relied on by the counsel appearing for the appellant would also clearly shows that the unauthorised passengers were not covered under Non-Fare Paying Passengers. Therefore, the appellant/Insurance Company is not liable to pay compensation to the claimant.

12. In view of the above, the appellant/Insurance company is absolved from liability to pay compensation to the claimant. The appellant/ Insurance Company is permitted to withdraw the amount already deposited before the tribunal. The award passed by the tribunal against the appellant/Insurance company is set aside. Therefore, the award is only against the owner of the vehicle, viz., 5th respondent herein. It is for the respondent/claimant to recover the said amount from the 5th respondent in the manner known to law.

13. In fine, the Civil Miscellaneous Appeal is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vaan

To

1. The Additional District & Sessions Court No.3
   (Motor Accidents Claims Tribunal),
   Chennai.

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

+1cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.12936

C.M.A.No.3772 of 2012
and M.P.No.1 of 2012

RSI(CO)
SU(30/09/2021)