IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2021
DELIVERED ON : 11.08.2021

CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.66 of 2016
and C.M.P.Nos.456, 5511 and 5512 of 2016

The Branch Manager,
The Oriental Insurance Company Limited,
Branch Office at
Siddha Veerappa Chetty Street,
Dharmapuri Town, District. ...Appellant/2nd Respondent

Vs

1.Radhika
2.Ramaye
3.Sadasivam
4.Johnbasha ...Respondents/Petitioners 1 to 3/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.762 of 2012, dated 21.04.2015, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijaya Raghavan

For Respondents : Ms.Kanimozhimathi for R1
R2 & R3 – no appearance
R4 – served – no appearance

J U D G M E N T
(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 21.04.2015 passed by the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri in MCOP.No.762 of 2012.

2.The Appellant Insurance Company has challenged the Award questioning its liability to pay the compensation as according to them, the deceased was a gratuitous passenger who was neither required to be covered under Section 147 of the Motor Vehicles Act nor covered by the policy of insurance.

3.In this appeal, the Appellant Insurance Company has not questioned the quantum of compensation awarded by the Tribunal but has only questioned its liability. Hence the only issue that needs to be adjudicated by this Court is whether the deceased was a gratuitous passenger or not and whether the Tribunal was right in directing the Appellant Insurance Company to pay the compensation to the dependants of the deceased who are the claimants in MCOP.No.762 of 2012.

4.Heard Mr.E.Rajadurai, learned counsel for the Appellant and Ms.kanimozhimathi, learned counsel for the first respondent.

5.Learned counsel for the Appellant drew the attention of this Court to the FIR dated 16.03.2012 which has been marked as Ex.P1 before the Tribunal and would submit that PW2 (Govindaraj) who was travelling along with the deceased Raman who had given a complaint after the accident based on which the FIR was registered has himself admitted that he along with the deceased Raman were travelling in a goods vehicle and were returning back after attending a marriage function of their relative on 16.03.2012 and were standing in the said vehicle when the accident had happened which resulted in the death of Raman.

6.Learned counsel for the Appellant would further submit that there is no statutory liability for the Insurance Company under Section 147 of the Motor Vehicles Act to pay compensation to the dependants of the deceased since the deceased was admittedly a gratuitous passenger at the time when the accident had happened.

7.He drew the attention of this Court to the contents of the FIR (Ex.P1) which is found in paragraph No.11 of the impugned Award and would submit that when the FIR (Ex.P1) which has been registered only at the behest of PW2, a co-traveller in the goods vehicle at the time of the accident, the Tribunal has erroneously by total non-application of mind has held that the Insurance Company is liable despite the admitted fact that when the accident had happened, there were no goods in the insured goods vehicle.

8.He would further submit that the pleadings in the claim petition contradicts the contents of the FIR as in the pleadings, the claimants have concocted a false story as if the deceased Raman was returning back with the goods after attending a marriage function of his relative but actually the deceased was a gratuitous passenger as at the time of the accident, the vehicle was empty.

9.Learned counsel for the Appellant would submit that it is settled law that in case of a gratuitous passenger, the Insurance Company is not liable to pay compensation under Section 147 of the Motor Vehicles Act. He would also submit that the policy of insurance which has been marked as Ex.P1 before the Tribunal also does not give coverage for a gratuitous passenger.

10.In support of his submissions, learned counsel for the Appellant drew the attention of this Court to the following Authorities:

(a) Judgement of Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Rattani and others reported in 2009 ACJ 925.

(b)A Division Bench judgment of the Madras High Court in the case of Bharathi Axa General Insurance Co. Ltd. vs. Aandi and Others reported in 2018 SCC OnLine Mad 13295.

(c) A Division Bench Judgment of Madras High Court in the case of Royal Sundaram Alliance General Insurance Co. Ltd. Vs. P.Ayyakannu and Ors. reported in (2009) 5 MLJ 707.

(d) Full Bench decision of the Madras High Court in the case of Branch Manager, United India Insurance Co. Ltd., vs. Nagammal reported in 2009 (1) CTC 1.

(e) A Single Bench judgment of the Madras High Court dated 18.09.2020 passed in CMA.No.1886 of 2014 in the case of M/s.Bajaj Allianz General Insurance Co. Ltd., vs. Mr.Thimmaiya and Others.

(f) A Single Bench judgment of the Madras High Court in the case of N.Kalaivani and Others vs. V.Srinivasan and S.Kanchana and Other passed in CMA.Nos.1013 of 2015 and CMA.No.406 of 2020.

11.Relying upon the aforesaid decisions, learned counsel for the Appellant would submit that when the FIR (Ex.P1) was registered only at the behest of a co-traveller in the insured goods vehicle and the FIR being part of the claim petition and being marked as exhibit only on the side of the respondents/claimants, the contents of the FIR which clearly indicate that the deceased was a gratuitous passenger in the insured goods vehicle, the FIR prevails over the pleadings as well as the oral evidence let in by the claimants before the Tribunal which contradicts the contents of the FIR.

12.He would submit that the aforesaid decisions relied upon by him have consistently held that a gratuitous passenger is not entitled to get compensation from the Insurance Company as there is no statutory liability fastened on the Insurance Company under Section 147 of the Motor Vehicles Act.

13.Per contra, Ms.kanimozhimathi, learned counsel for the Respondents/claimants would submit that the deceased was not a gratuitous passenger and would submit that the deceased was returning back along with goods after attending a marriage function of his relative.

14.She drew the attention of this Court to the pleadings contained in the claim petition as well as the depositions of PW1 and PW2. According to her, a consistent stand has been taken before the Tribunal that the deceased was a representative of the owner of the goods which was carried in the insured vehicle when the accident had happened on 16.03.2012. According to her, the FIR (Ex.P1) has no evidentiary value when the pleadings and the depositions clearly reveal that the deceased was not a gratuitous passenger. According to her, the Tribunal has correctly held that the Insurance Company is liable to pay the compensation as the deceased was not a gratuitous passenger. According to her, the FIR (Ex.P1) can be relied upon only for the purpose of setting the criminal law in motion. According to her, all that is stated in the FIR cannot be said to be an admitted fact. According to her, the FIR (Ex.P1) omitted the fact that the deceased Raman was returning back in the insured vehicle along with the goods as a representative of the owner of the goods. According to her, any motor accident claim is adjudicated only based on preponderance of probabilities and therefore the Tribunal has correctly held that the Insurance Company liable to pay the compensation after observing that when two views are possible, the view which supports the motor accident claim will have to be taken.

15.In support of her submissions, learned counsel for the respondents/claimants drew the attention of this Court to the following authorities:

(a)A Single Bench judgment of the Madras High Court dated 13.06.2014 in the case of Royal Sundaram Alliance Insurance Co. Ltd., Vs. D.Gunasekaran and Others passed in CMA.Nos.1739 to 1746 of 2007.

(b)A Single Bench judgment of the Madras High Court in the case of The Branch Manager, Reliance General Insurance Co. Ltd., Pondicherry vs. Elumalai and Others reported in 2021 0 Supreme (Mad) 480.

16.Relying upon the aforesaid decisions, learned counsel for the respondents would submit that pleadings and evidence adduced by the claimants cannot be brushed aside and when the FIR (Ex.P1) has omitted to mention about the fact that at the time of the accident, the deceased was returning back with the goods as a representative of the owner of the goods, the claimants cannot be faulted for such an omission in the contents of the FIR. According to her, the pleadings as found in the claim petition and depositions of PW1 and PW2 categorically infer that the deceased was not a gratuitous passenger at the time of the accident as he was returning back in the insured vehicle along with the goods as a representative of the owner of the goods. According to her, there is a statutory liability fastened upon the Appellant Insurance Company under Section 147 of the Motor

Vehicles Act to pay the compensation to the claimants as the deceased was not a gratuitous passenger.

Discussion:

17.Under Section 147 of the Motor Vehicles Act, the Insurance Company is not statutorily liable to pay compensation when the accident victim is a gratuitous passenger in a goods vehicle. Only in cases where the accident victim was the owner of the goods or its authorized representative, the Insurance Company is liable. The above proposition is well settled by various decisions of the Hon'ble Supreme Court and High Courts. All the decisions referred to by both the learned counsels have also reiterated the settled law. However, each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire outcome. The determination as to whether the accident victim is a gratuitous passenger or not depends on the facts of each and every case and the supporting evidence available.

18.In the case on hand, the FIR (Ex.P1) is a part of claim petition filed by the respondents before the Tribunal in MCOP.No.762 of 2012. In paragraph No.9 of the claim petition, it has been specifically pleaded by the claimants that FIR (Ex.P1) has been registered against the driver of the insured goods vehicle in Crime No.92 of 2012 under Sections 279, 337 and 304(A) of IPC. The FIR (Ex.P1) was registered only at the behest of Govindaraj (PW2) who had also travelled along with the deceased Raman on 16.03.2012 in the insured goods vehicle bearing Registration No.TN 30 V 8483 when the accident had happened.

19.As seen from the FIR (Ex.P1), there is no reference to the presence of the goods in the insured vehicle at the time of the accident on 16.03.2012. The contents of the FIR (Ex.P1) reveal that PW2 has given a complaint to the Police on the date of the accident on 16.03.2012 stating that one week back his relative's daughter got married to a boy at Kadathur and he and his relatives along with the deceased Raman were returning back in the insured Tata Ace vehicle bearing Registration No.TN 30 V 8483 from Kadathur after attending a post marriage related function when he and deceased Raman were standing inside the goods vehicle on its left side due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened which resulted in the death of Raman. However, in the claim petition, a new has been taken stating that after attending the marriage related function the deceased were returning back along with the goods as a representative of the owner of the goods. PW2 (Govindaraj), the person who travelled and who is also the defacto complainant has deposed before the

Tribunal contradicting the contents of the FIR by stating that he and the deceased were travelling in the goods vehicle as a representative of the owner of the goods. The pleadings as well as the deposition of PW2 before the Tribunal contradicts the contents of the FIR (Ex.P1) which does not refer to the presence of the goods at the time of the accident. When PW2 (Govindaraj) is the defacto complainant based on which an FIR has been registered in Crime No.92 of 2012 against the driver of the insured goods vehicle under Sections 279, 337 and 304(A) of IPC and that too when the FIR (Ex.P1) is also part of the claim petition as seen from the clause 9 of the claim petition, the FIR (Ex.P1) has certainly an evidentiary value. No reasons have also been given by PW2 in his deposition as to why he has taken a contradictory stand in his deposition when in the FIR, there is no reference to the presence of any goods or transportation by the deceased as an authorized representative of the owner of the goods.

20.In the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Rattani and others reported in 2009 ACJ 925 referred to supra, it has been held that ordinarily allegation made in FIR is not admissible in evidence but if FIR has been made a part of claim petition it can be looked into by the Tribunal /Court. In Rattani's case also, the FIR did not mention that goods were loaded in the goods vehicle, but, however, in their deposition, the claimants raised a new plea that the deceased and other injured persons were travelling in the said vehicle as the representative of the owner of the goods. The Hon'ble Supreme Court held that though the First Information Report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the Insurance Company, but, when the First Information Report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the purpose of adjudicating as to whether the accident victim was a gratuitous passenger or not. The Hon'ble Supreme Court in the very same decision has held that an admission made in the pleadings as is well-known is admissible in evidence "proprio vigore" (of or by its own force independently). The Hon'ble Supreme Court held that when the FIR is a part of the claim petition, the same has evidentiary value.

21.In the case on hand, the FIR (Ex.P1) was also part of the claim petition as it has been specifically pleaded by the claimants in clause 9 therein. Despite the same, PW2 (Govindaraj), the person who travelled along with the deceased has made a contradictory statement in his deposition by deposing that the deceased was travelling along with the goods as the representative of the owner of the goods.

22.In the decision relied upon by the learned counsel for the respondents in the case of Royal Sundaram Alliance Insurance Co. Ltd., Vs. D.Gunasekaran and Others referred to supra, the complaint was given by a third party and he was not travelling in the goods vehicle at the time of the accident. The facts of that case has no bearing for the facts of the instant case. As observed earlier, each case depends upon its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the outcome of the case. The evidentiary value of an FIR given by a person who travelled in the goods vehicle along with the deceased and the evidentiary value of an FIR based on complaint given by a third party who did not travel in the goods vehicle at the time of the accident cannot be compared. An FIR registered at the behest of a third party may not be ordinarily admissible in evidence but when the FIR has been registered at the best of a person travelling in the very same goods vehicle at the time of the accident along with the deceased and is part of the claim petition is admissible as a strong piece of evidence and the complainant (PW2) cannot back track by giving a contradictory statement in his deposition.

23.In the case on hand, PW2 (Govindaraj) is the complainant and only in his behest, the FIR was registered which has been marked as Ex.P1 before the Tribunal. As seen from the FIR, it is clear that there was no presence of the goods at the time of the accident on 16.03.2012. The FIR (Ex.P1) is also part of the claim petition No.762 of 2012 as seen from clause 9 of the said claim petition. However, the complainant (PW2) has made a contradictory statement in his deposition before the Tribunal stating that he and the deceased were returning in the goods vehicle along with the marriage articles belonging to the owner and had acted as owner's representatives when the accident happened which resulted in the death of Raman. This Court is of the considered view that the ratio laid down by the Hon'ble Supreme Court in Rattani case referred to supra is squarely applicable to the facts of this case also and the decision relied upon by the learned counsel for the claimants in the case of Royal Sundaram Alliance Insurance Co. Ltd., Vs. D.Gunasekaran and Others has no bearing for the facts of the instant case as in that case the complaint was given by a third party who did not travel in the goods vehicle at the time of the accident.

24.Furthermore, in the case on hand, the deceased along with (Govindaraj) PW2 was not travelling in the cabin of the insured goods vehicle but were travelling in the back portion of the vehicle where the goods are normally kept. This fact is admitted by the claimants as seen from their pleadings found in the claim petition where they have stated that the deceased was standing in the insured goods vehicle at the place where the goods are ordinarily kept when the accident had happened which resulted in the death of Raman.

25.In a Division Bench judgment of the Madras High Court in the case of Royal Sundaram Alliance General Insurance Co. Ltd. Vs. P.Ayyakannu and Ors. reported in (2009) 5 MLJ 707, it has been held that it is prohibited for any person to travel on top of a goods carriage vehicle. The Division Bench of the Madras High Court in the aforesaid decision has followed the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd., vs. Anjana Shyam and Others reported in AIR 2007 SC 2870 and National Insurance Co. Ltd., vs. Cholleti Bharatamma reported in AIR 2008 SC 484 and also Rules 236, 238 and 240 of the Motor Vehicle Rules. The Division Bench has held that the insurer is liable to indemnify the liability only with regard to the person who sat in the cabin of the vehicle along with the driver.

26.In the case on hand, the deceased was admittedly travelling in the place meant for keeping the goods. In such places, there is always a danger of falling from the vehicle as he will not be able to maintain his balance in a running vehicle. It is also an admitted fact that the deceased was standing in the vehicle when the insured goods vehicle met with the accident which resulted in his death. In the place meant for keeping the goods, there will not be any hand grip for support and there is always a danger for any person to fall down. This is the reason why the owners of the goods or the authorized representative of the owners of the goods will have to travel in the cabin and not in the place meant for keeping the goods. No evidence has also been produced by the claimants to prove that there was separate seating facility in the place where the goods are kept in the insured goods vehicle.

27.It is incontrovertible general rule that persons travelling in a vehicle must at all times exercise ordinary care that a normal person of ordinary prudence will take. In the case on hand, danger of falling down from the vehicle is reasonably manifested by the fact that the deceased was travelling in a goods vehicle not in the cabin but in the place where the goods are normally kept and that too he was not seated and was standing at the time of the accident. The circumstances which resulted in the death of Raman will conclusively prove that only due to his own fault of travelling in a goods vehicle in the place meant for keeping the goods, the accident had happened.

28.For the foregoing reasons, this Court is of the considered view that the deceased was a gratuitous passenger.

The decisions relied upon by the learned counsel for the Appellant referred to supra including the latest decision of the Division Bench of the Madras High Court in the case of Bharathi Axa General Insurance Co. Ltd. vs. Aandi and Others reported in 2018 SCC OnLine Mad 13295 are squarely applicable to this case also as here also the deceased was a gratuitous passenger. However, the Tribunal has erroneously misdirected itself by misappreciating the evidence available on record by holding the Insurance Company liable to pay the determined compensation.

29.In view of the settled position of law that in case of a gratuitous passenger, the Insurance Company is exonerated from any liability, the impugned Award passed against the Appellant Insurance Company has to be set aside by this Court.

30.In the result, the impugned Award dated 21.04.2015 passed in MCOP.No.762 of 2012 against the Appellant Insurance Company is hereby set aside and the appeal is allowed.

31.The owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.762 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents/claimants through RTGS, within a period of two weeks thereafter.

32.If the Appellant Insurance company has already deposited the amount awarded by the Tribunal, it is open for the Appellant Insurance company to file an appropriate application to withdraw the amount deposited by them before the Tribunal and the Tribunal shall also permit such withdrawal. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pam
To

1.The Motor Accidents Claims Tribunal,
Principal District Judge, Dharmapuri.

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

+1 CC to Ms.Kanimozhimathi, Advocate sr 40163.

C.M.A.No.66 of 2016

SS(CO)
SP(27/10/2021)