IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.03.2021]

[PRONOUNCED ON: 30.03.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.671 of 2016
and
C.M.P.No.5477 of 2016

Royal Sundaram Alliance Insurance Company Ltd.,
No.1, Club House Road, Chennai - 600 002.
... Appellant/ 2nd Respondent

.. Vs ..

1. Krishnaveni .. Respondents 1 to 4/ Petitioners 1 to 4
2. Gunasekar
3. Dhanaseelan
4. Minor Komathi
5. Amsa ... 5th Respondent/ 1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.02.2015 made in M.C.O.P.No.798 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional Tribunal Judge), Tindivanam.

For Appellant : Mr.M.Krishnamoorthy

For R-1 to R-4 : Mr.N.Deepanraj

For R-5 : Mr.K.Subburam

JUDGMENT

The Insurance Company has preferred this appeal against the Judgment and Decree dated 24.02.2015 passed by the Motor Accidents Claims Tribunal (Additional Tribunal Judge), Tindivanam, in M.C.O.P.No.798 of 2010.

2. Respondents 1 to 4 herein are the legal representatives of the deceased Kuppusamy. The fifth respondent herein is the owner of the vehicle.

3. The respondents 1 to 4 herein have filed a claim petition alleging that on 16.10.2010 at about 9.00 p.m., the deceased Kuppusamy, who was working as a load man, was

travelling on the rear of the vehicle belonging to the fifth respondent herein by sitting on the top of the goods and the driver of the lorry drove the same in a rash and negligent manner and applied sudden break in the road turn and as a result of which, the deceased slipped and fell down, sustained grievous injuries and died on the spot. Hence, the legal heirs of the deceased have preferred the claim petition before the Tribunal, claiming a sum of Rs.15,00,000/- as compensation.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.6,25,104/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. As against the said award passed by the Tribunal, the Insurance Company has filed this appeal.

5. Learned counsel for the appellant/Insurance Company would contend that the deceased Kuppusamy is only a load man and he was travelling on the rear of the vehicle by sitting on the top of the goods and in the road turn, he slipped and fell down.

6. Learned counsel for the appellant relied upon a decision of the Hon'ble Supreme Court reported in 2008 (2) TN MAC 29 SC [National Insurance Company Ltd., Vs. Cholleti Bharatamma and others].

7. Per contra, learned counsel for the fifth respondent/owner of the vehicle would contend that the deceased is a load man and he has paid necessary premium to the insurance company. The learned counsel for the fifth respondent/owner of the vehicle also relied upon a decision of this Court reported in 2005 (2) TN MAC 116 [United India Insurance Company Vs. C.Ramesh] and submitted that the appellant herein/insurance company is liable to pay the claim in respect of third party claim and also relied upon the terms of policy.

8. The respondents 1 to 4 herein are the legal representatives of the deceased Kuppusamy. Both in the pleadings and in the evidence, it is stated that the deceased Kuppusamy was travelling on the backside of the vehicle by sitting on the top of the goods and hence, he was an unauthorised passenger. While the deceased was sitting on the goods which are being carried on by the lorry, the accident has taken place and as a result of which, he fell down, sustained injuries and subsequently, succumbed to injuries so is the evidence of D.W.1 and even as per Ex.P.1-FIR, the said pleading and the evidence of P.W.2 is duly reflected and hence, I hold that the deceased was travelling on the backside of the vehicle and he sat over the goods lorry and the goods are being carried in the lorry and hence, he should be treated as an unauthorised passenger.

9. On perusal of Ex.R.1-Xerox copy of insurance policy, I find that no additional premium has been made to cover the load man. It remains to be stated that even the owner of the vehicle is required to pay the insurance.

10. In the decision reported in 2009 (2) TCJ 641 [United India Insurance Company Ltd., Vs. Chinnathambi @ Ramasamy and another], Civil Miscellaneous Appeal No.1253 of 2003, dated 26.08.2009, this Court has held as follows:-

> "No person shall be permitted to travel upon goods. Owner of the lorry has clearly violated the conditions of the policy and as per Rule 238, no person including owner of the goods is permitted to travel on goods and if anything happened in contravention of the said Rules, the Court cannot direct the concerned Insurance Company to pay compensation to affected person. Award passed against the insurance company is set and the owner of the vehicle is directed to pay compensation. Appeal partly allowed."

11. In the decision reported in 2012(1) TNMAC 89 (DB), [Royal Sundaram Alliance General Insurance Company Ltd., Vs. P.Ayyakannu and another], this Court has taken a view that the load man, who is travelling in the vehicle along with the goods, is not entitled to claim compensation from the insurance company.

12. In this case, the deceased was travelled as an unauthorized passenger in the goods lorry belongs to the fifth respondent herein and hence, the appellant/Insurance Company cannot be mulcted with any liability to pay the compensation to the claimants/respondents 1 to 4 herein.

13. In view of the above factual position coupled with the legal position as enumerated by this Court as extracted above, I find that the deceased Kuppusamy was travelled as an unauthorised passenger by sitting on the top of the goods and the goods have been carried on in the backside of the vehicle and in respect of such claim, the appellant herein/insurance company is not liable under Ex.R.1-policy, because no premium has been paid and hence, I am of the considered view that the finding of the Tribunal that the appellant herein/insurance company is liable to pay compensation is liable to be vacated and accordingly, it is hereby modified to the limited extent, lifting the fastening of liability on the part of the insurance company only.

14. After perusing the award, it is seen that the quantum of compensation awarded by the Tribunal under various heads, is found to be just and reasonable and accordingly, the same is hereby confirmed.

15. In the result,

[i] The Civil Miscellaneous Appeal is allowed and the finding rendered by the Tribunal is hereby modified to the effect that the liability of the insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimant and if any amount is already deposited by the insurance company, the same shall be refunded to the appellant herein/insurance company.

[ii] The fifth respondent herein, who is the owner of the vehicle bearing Registration No.TN-32-M-6768, is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.798 of 2010 on the file of the Motor Accidents Claims Tribunal, [Additional Tribunal Judge], Tindivanam, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit, the respondents 1 to 4 herein/claimants are permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any.

[iv] There shall be no order as to costs.

[v] The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Additional Tribunal Judge,
Motor Accidents Claims Tribunal,
Tindivanam.

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

C.M.A.No.671 of 2016

RR(CO)
SB(18/11/2021)