IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.07.2021	Delivered on: 30.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.Nos.2083 to 2085 of 2018
and
C.M.A.Nos.4176, 4178 & 4179 of 2019

Gowrammal .. Appellant in C.M.A.No.2083/2018 / Petitioner in MACTOP No.299/2000

1.Suganthi
2.Minor Chandrabose
(Minor rep. By mother Suganthi)
3.Anjiyammal
4.Shanmugam .. Appellants in C.M.A.No.2084/2018 / Petitioners in MACTOP No.296/2000

Ponni .. Appellant in C.M.A.No.2085/2018 / Petitioner in MACTOP No.298/2000

Kanchana .. Appellant in C.M.A.No.4176/2019 / Petitioner in MACTOP No.139/2001

Annamalai .. Appellant in C.M.A.No.4178/2019 / Petitioner in MACTOP No.138/2001

Selvam .. Appellant in C.M.A.No.4179/2019 / Petitioner in MACTOP No.297/2000

Vs.

1.Rambai

2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.1, Katpadi Salai,
Vellore. .. Respondents in all C.M.As./ Respondents in all MCOPs

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 06.02.2013, made in M.C.O.P. Nos.299, 296 & 298 of 2000, 139 & 138 of 2001 & 297 of 2000 respectively, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

(In all C.M.As.)

For Appellant(s) : Mrs.A.Subadra
for M/s.M.Malar

For Respondents : Died (R1)
Mr.R.Sivakumar (For R2)

COMMON JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid mode")

These appeals have been filed against the common judgment and decree dated 06.02.2013, made in M.C.O.P. Nos.299, 296 & 298 of 2000, 139 & 138 of 2001 & 297 of 2000 respectively, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.All the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 filed M.C.O.P. Nos.299 & 298 of 2000, 139 & 138 of 2001 & 297 of 2000 respectively, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.1,00,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.1,00,000/- and Rs.2,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 30.06.1995. The appellants in C.M.A.No.2084 of 2018 filed M.C.O.P.No.296 of 2000 on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.3,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 30.06.1995.

4.According to the appellants, on the date of accident, when the deceased Ganesan in C.M.A.No.2084 of 2018 and appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of

2019 were traveling as Coolies in a Lorry bearing Registration No.TNU-3942, owned by the 1st respondent, from Kurisilapati, to load and unload the goods, near Irulaapatu bridge, the driver of said Lorry drove the vehicle in a rash and negligent manner, dashed on the lamppost, capsized the vehicle on the south side of the bridge and caused the accident. In the accident, the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 sustained grievous injuries and the deceased Ganesan in C.M.A.No.2084 of 2018 sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Lorry owned by the 1st respondent. Hence, the appellants filed the said claim petitions, claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

5.The 1st respondent, owner of the Lorry, filed separate counter statements and denied all the averments made by the appellants. According to the 1st respondent, the injured appellants as well as the deceased Ganesan were not employed as Coolies at the time of accident and they are unauthorized passengers. In any event, the Lorry was insured with the 2nd respondent/Insurance company at the time of accident. Hence, if any liability is fastened on the 1st respondent, only the 2nd respondent-Insurance Company is liable to pay the compensation. Also, the 1st respondent has contended that he did not own the Lorry at the time of accident, as he has already sold the same to one B.Thirugnanam and the said B.Thirugnanam has to be impleaded as party to these claim petitions and prayed for dismissal of the claim petitions as against the 1st respondent.

6.The 2nd respondent-Insurance Company filed separate counter statements and denied all the averments made by the appellants. According to the 2nd respondent, the appellants have to prove that at the time of accident, the driver of the Lorry possessed valid driving license and the vehicle had valid Registration Certificate, Permit and Fitness Certificate. The claim petitions are bad for non-joinder of driver of the Lorry, who is a necessary party. The injured appellants and said deceased Ganesan have traveled in the vehicle as unauthorized passengers and violated the policy conditions. Hence, for breach of policy conditions, the 2nd respondent-Insurance Company is not liable to pay compensation to the appellants. As per the policy, only five coolies were covered. Even assuming the appellants to be coolies, the 2nd respondent is liable to pay compensation only to five coolies. The injured appellants and the deceased Ganesan were not working as coolies under the 1st respondent, as claimed by them. On the other hand, they travelled as unauthorized passengers for plucking mango fruits from the fields and they are coolies engaged by Mango Mundy owner at Tirupattur. The appellants in all the appeals have already filed claim petitions in M.C.O.P.Nos.100, 73, 106, 99, 70 and 72 of 1996 respectively, claiming compensation before the Sub Court at Tirupattur and the same are pending before the said Tribunal. The appellants have wantonly suppressed the said facts and have come out with the present claim petitions and hence, prayed for dismissal of the claim petitions in-limini. In any event, the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 have to prove their age, avocation and income, injuries sustained and treatment taken and the appellants in C.M.A.No.2084 of 2018 have to prove the age, avocation and income of the deceased Ganesan to claim compensation. The total compensation claimed by the appellants are excessive.

7.Before the Tribunal, the appellant in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 examined themselves as P.W.5, P.W.4, P.W.2, P.W.1 and P.W.3 respectively, examined 1st appellant in C.M.A.No.2084 of 2018 as P.W.6, Dr.Ravindran as P.W.7 and marked 19 documents as Exs.P1 to P19. The 2nd respondent examined one Ramasubramaniyam, their Deputy Manager, as R.W.1 and marked the Insurance Policy of Lorry as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Lorry owned by the 1st respondent and directed the 1st respondent to pay a sum of Rs.83,000/-, Rs.3,00,000/-, Rs.96,000/-, Rs.10,000/-, Rs.86,000/- and Rs.1,30,000/- as compensation to the appellants in all the appeals respectively. The Tribunal dismissed the claim petitions as against the 2nd respondent-Insurance Company.

9.Challenging the liability fixed on the 1st respondent and not being satisfied with the amounts awarded by the Tribunal in the common award dated 06.02.2013, made in M.C.O.P. Nos.299, 296 & 298 of 2000, 139 & 138 of 2001 & 297 of 2000 respectively, the appellants have come out with the present appeals.

10.Though the appellants in all the appeals raised various grounds questioning liability and quantum, at the time of arguments, Ms.A.Subadra, learned counsel appearing for the appellants restricted her arguments only with regard to liability fastened on the 1st respondent. The learned counsel appearing for the appellants contended that at the time of accident, the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 and deceased Ganesan in C.M.A.No.2084 of 2018 travelled as Coolies employed by the owner of the goods. In the absence of any evidence by the 2nd respondent-Insurance Company to prove that the appellants travelled in the Lorry as unauthorized passengers, the Tribunal erroneously held that the appellants violated the policy conditions by travelling as unauthorized passengers and exonerated the 2nd respondent from its liability. The Tribunal ought to have considered that the owner of the vehicle has paid premium for driver, cleaner and five coolies. The 2nd respondent-Insurance Company has admitted that the claimants and the deceased Ganesan are coolies engaged by Mango Mundy owner at Tirupattur. Though the 1st respondent contended that he has sold the vehicle, he neither marked the delivery note for transfer of vehicle to some other person nor adduced evidence in that regard. The Tribunal, without considering the same, erroneously shifted entire burden on the 1st respondent. Taking into consideration the Insurance Policy, marked as Ex.R1, which was in force at the time of accident, the Tribunal ought to have ordered pay and recovery. Hence, the learned counsel would pray that the 2nd respondent-Insurance Company may be directed to pay the compensation at the first instance and recover the same from the 1st respondent.

11.In support of her contentions, the learned counsel for the appellants relied on the following judgments:

(i) AIR 2008 (SC) 2851 [Andhra Pradesh State Road Transport Corporation & another Vs. K.Hemalatha & others]

(ii)C.M.A.No.2183 of 2017 dated 12.09.2018 [The Divisional Manager, Royal Sundaram Alliance Insurance Co. Ltd., Vs. Shabiullah and others]

(iii)2010 (1) TNMAC 711 [National Insurance Company Limited Vs. P.Sakthi & others]

(iv)2018 (2) TNMAC 273 [Shivaraj Vs. Rajendra & Another]

12.Per contra, Mr.R.Sivakumar, learned counsel appearing for the 2nd respondent-Insurance Company made submissions that these appeals are not maintainable. The Tribunal has rightly held that the 1st respondent/owner of the Lorry is liable to pay the award amount, since the injured appellants and the deceased Ganesan are traveling as unauthorized passengers. Since the owner is made liable, he is the aggrieved person, but he has not preferred any appeal. It is contended that the appellants are not aggrieved persons, as compensations were awarded and they got the order in their favour. Hence, the appellants are estopped from questioning the award passed by the Tribunal. It is also contended that since the 1st respondent/owner is dead, these appeals are abated. The appellants are third parties and they cannot question the award passed against the owner. It is further contended that the coolies should be the coolies under the owner of vehicle insured with the Insurance Company and the

1st respondent did not permit the claimants and the deceased to travel in the goods vehicle. The learned counsel for the 2nd respondent would admit the averments made in paragraph No.6 of the separate counter statements, such that five coolies are covered under the policy and the 2nd respondent-Insurance Company is liable to pay compensation to five coolies statutory, but the Insurance Company's appeal is restricted to the terms and conditions of the policy. The learned counsel would vehemently deny the arguments put forth by the learned counsel for the appellants that the 2nd respondent has admitted that the injured appellants and deceased Ganesan are the coolies and prayed for confirming the award of the Tribunal and dismissal of the appeals.

13.In support of his contentions, the learned counsel for the 2nd respondent relied on the following judgments:

(i)2018 (2) TNMAC 731 (DB) [Bharati AXA General Insurance Co. Ltd., Vs. Aandi & others]

(ii)2003 (ACJ) 1058 [Rajamani and others Vs. A.Ramar and others]

(iii)2005 (2) TNMAC 308 (Mad) [Jeeva Transport Corporation Vs. K.Viswanathan & others]

14.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

15.It is the case of the appellants that, on the date of accident, when the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 and deceased Ganesan in C.M.A.No.2084 of 2018 travelled as Coolies to load and unload the goods, in the Lorry owned by the 1st respondent, the driver of the Lorry drove the same in a rash and negligent manner, dashed on the Lamppost, capsized the vehicle near south side of the bridge and caused the accident. In the accident, the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 sustained grievous injuries and deceased Ganesan in C.M.A.No.2084 of 2018 sustained fatal injuries. The appellants, who are the eye-witness to the accident, examined themselves as P.W.1 to P.W.5, to prove the manner of accident and marked the FIR registered against the driver of the Lorry as Ex.P1. The respondents neither let in any independent evidence to disprove the evidence of the appellants as P.W.1 to P.W.5, nor filed any objection to the FIR being registered against the driver of the Lorry. From Ex.P1-FIR and Ex.P3 – charge sheet, it is seen that 23 persons traveled in a goods vehicle. Though the deceased Ganesan and injured appellants claimed to be the authorized passengers, the 1st respondent/owner resisted the same and filed separate counter statements, contending that they are not coolies working under him. Once when the 1st respondent/owner of the vehicle himself has filed separate counter statements by stating that the injured appellants and the deceased Ganesan were not coolies working under him, the 2nd respondent-Insurance Company need not indemnify the owner of the vehicle. There is no proof that the injured appellants and the deceased Ganesan are authorized passengers. Being the claimants, it is for them to prove that they traveled as coolies under the 1st respondent and it is not for the 2nd respondent-Insurance Company to prove the same. In the absence of any evidence by the appellants to prove that they traveled in the Lorry as coolies, for violating the policy conditions by permitting the unauthorized passengers to travel in the vehicle, the Tribunal rightly fixed the liability on the owner of the Lorry and exonerated the 2nd respondent-Insurance Company.

16.As far as the contention of the learned counsel for the 2nd respondent that the appeal is abated as the 1st respondent/owner of the Lorry is dead is concerned, the right of the appellants are covered under Section 155 of the Motor Vehicles Act, which reads as under:

> "155.Effect of death on certain causes of action - Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance has been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of the Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."

17.It is relevant to take a note of Rule 236 of the Tamil Nadu Motor Vehicles Rules, which enumerates the limit of persons in goods carriage and the same reads as under:

> "236.Limit of persons in goods carriage - No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."

In view of Rule 236 of the Tamil Nadu Motor Vehicles Act, the contention of the learned counsel for the appellants is without merits. The judgments relied on by the learned counsel for the appellants are not applicable to the facts of this case.

18.The Division Bench of this Court, in the judgment reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others), which was relied on by the learned counsel 2nd respondent, allowed the five appeals holding that the claimants traveled only as gratuitous passengers in the vehicle and the Insurance Company is not liable to pay any compensation to the claimants and only owner of the vehicle is liable to pay compensation. The relevant paragraphs from the said judgment are extracted hereunder:

> "49. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.
>
> 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.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.”

The ratio in the said judgment is also squarely applicable to the facts of the present case. Hence, there is no error in the award of the Tribunal warranting interference by this Court.

19.In the result, all the Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.83,000/-, Rs.3,00,000/-, Rs.96,000/-, Rs.10,000/-, Rs.86,000/- and Rs.1,30,000/- to the appellant/appellants in all the appeals respectively, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit are confirmed. The appeals are dismissed as against the 2nd respondent-Insurance Company. The appellants in all the appeals are directed to file necessary petitions before the Tribunal, to implead the legal heirs of the deceased 1st respondent. The legal heirs of the deceased 1st respondent, on behalf of the 1st respondent, are directed to deposit the award amount along with 7.5% interest and costs from the date of petitions till the date of deposit, excluding the period from 05.01.2016 to 03.08.2012 and less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.299 & 298 of 2000, 139 & 138 of 2001 & 297 of 2000 respectively, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

(i) On such deposit, the appellants in C.M.A.Nos.2083 & 2085 of 2018 and C.M.A.Nos.4176, 4178 & 4179 of 2019 are permitted to withdraw their respective award amount, determined by the

Tribunal, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

(ii) On such deposit, the appellants 1, 3 and 4 in C.M.A.No.2084 of 2018 are permitted to withdraw their share of the award amount, determined by the Tribunal, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. No costs.

Sd/-
Assistant Registrar (TNMCC)

//True Copy//

Sub Assistant Registrar

gsa

To

The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

Copy to:

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

+1CC to Mr.M.Malar, Advocate, Sr.No.36978
+1CC to Mr.R.Sivakumar, Advocate, Sr.No.36790

C.M.A.Nos.2083 to 2085 of 2018
and C.M.A.Nos.4176, 4178 & 4179 of 2019

PP (CO)
K.RK. (24.11.2021)