



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.1729 to 1731 of 2014

and

MP.Nos.1, 1 & 1 of 2014

CMA.No.1729 of 2014

United India Insurance Company Limited,
Katpadi Road,
Vellore, Vellore District

... Appellant/2nd Respondent

Versus

1.Rangasamy

... 1st Respondent/Claimant

2.Govindasamy

... 2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 30.01.2014 made in OP.No.1001 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.

CMA.No.1730 of 2014

United India Insurance Company Limited,
Katpadi Road,
Vellore, Vellore District

... Appellant/2nd Respondent

Versus

1.P.Shankar

... 1st Respondent/Claimant

2.Govindasamy

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 30.01.2014 made in OP.No.1002 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.



CMA.No.1731 of 2014

United India Insurance Company Limited,
Katpadi Road,
Vellore, Vellore District

... Appellant/2nd Respondent

Versus

1.Murali

... 1st Respondent/Claimant

2.Govindasamy

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 30.01.2014 made in OP.No.1004 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.

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 the award and decree dated 30.01.2014 made in OP.No.1001, 1002 & 1004 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur

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

3. The case of the claimants is that on 23.01.2008, when they were travelling as loading and unloading cooli in a tractor trailer loaded with bricks, its driver had driven the tractor in a rash and negligence manner, due to which the tractor and trailer capsized on the road. In the said accident, the claimants sustained grievous injuries. They were immediately taken to Government Hospital, Tirupattur for treatment. They have become permanently disabled and filed separate claim petitions respectively.

4. Resisting the same, the second respondent filed counter stating that the tractor belongs to the first respondent which



was insured with the second respondent under farmers package policy. The coolis travelled in the tractor trailer have no coverage and no extra premium has been paid by the first respondent. The tractor and trailer should be used only for agricultural purpose. Whereas the first respondent used the tractor and trailer for commercial purpose by carrying bricks in the trailer. Therefore, the second respondent is not at all liable to pay any compensation to the claimants. Further stated that the driver of the tractor trailer did not possess any valid driving licence. Therefore, the policy does not cover coolis to pay any compensation and sought for dismissal of the claim petitions.

5. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.9. On the side of the respondents, they examined R.W.1 to R.W.3 and marked Ex.R.1 to Ex.R.4. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened liability on the second respondent and awarded compensation in all the claim petitions respectively. Aggrieved by the same, the second respondent came forward with the present appeals questioning the liability alone.

6. The learned counsel appearing for the appellant submitted that the tractor and trailer owned by the first respondent was insured under farmers package policy. Therefore, the coolis travelled in the tractor trailer have no coverage and no extra premium has been paid and as such the second respondent has no contractual liability to pay any compensation. Therefore, the Tribunal ought not to have directed the insurance company to pay compensation with liberty to recover the same from the first respondent. The insurance policy does not cover liability to the coolis and the seating capacity of the tractor is zero and no other provision for seats. When the tractor and trailer having no seating capacity, the owner of the vehicle alone is liable to pay compensation in view of the judgment of the Hon'ble Supreme Court of India in the case of United India Insurance Co. Ltd., Vs Suresh K.K. and another reported in 2008 ACJ 1741 and the judgment in the case of National Insurance Company Limited, Gopichettipalayam Vs Gurusamy & 2 others rendered in CMA.No.2919 of 2007 by this Court.

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. The tractor and trailer belong to the first respondent which was insured with the second respondent under the farmers package policy. On 23.01.2008, all the claimants were travelling as loading and unloading coolis in the tractor and trailer loaded with bricks. The driver of the tractor and trailer had driven the tractor in a rash and negligent manner and due to which, the tractor and trailer capsized on the road side. In the accident, the claimants have sustained grievous injuries. Admittedly, the tractor and trailer was insured with the second respondent under farmers package policy, which is marked as Ex.R2. It revealed that the tractor and the trailer has no seating capacity.

9. Though the Tribunal exonerated the second respondent from the liability to pay any compensation, and has directed the second respondent to pay compensation and recover the same from the owner of the vehicle. But the second respondent has no contractual liability since the policy itself does not cover any person as required under Section 147 of Motor Vehicles 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 person in the trailer. Under Section 147 of MV Act, the insurance company is not statutorily required to cover the liability in respect of a person in a trailer. 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 Act. What is contemplated by the proviso to Section 147(1) is that the policy shall not be required to





with interest accrued thereon. The claimants are at liberty to recover the award amount from the second respondent i.e. the owner of the tractor and trailer in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur.
- 2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

C.M.A.Nos.1729 to 1731 of 2014

GSM(CO)
GN(10/12/2021)