IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.07.2021

Judgment Delivered on : 22.11.2021

Coram :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. No. 2115 of 2014
and
M.P.No.1 of 2014

National Insurance Company Ltd.,
Branch Office
No.12, First Floor
Muruga Complex
K.K. Road, Villupuram ... Appellant/2nd Respondent

Versus

1. Sivakumar ...1st Respondent/Claimant
2. Krishnan ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.02.2013 passed in MCOP No. 95 of 2011 on the file of the Motor Accidents Claims Tribunal, Villupuram (Principal Sub-ordinate Court, Villupuram)

For Appellant : Mr. S. Vadivel

For Respondents : Mr. V.S. Sivasundaram for R1
Mr. N. Thamizhvel for R2

JUDGMENT

The appellant has filed this appeal questioning the validity and/or correctness of the Judgment dated 28.02.2013 passed in MCOP No. 95 of 2011 on the file of Motor Accidents Claims Tribunal, Villupuram.

2.The first respondent herein has filed the claim petition namely MCOP No. 95 of 2011 before the Tribunal contending that on 23.12.2010 at about 4.00 pm, when he was travelling in the Tractor bearing Registration No. TN 63 E 6692, near a place called Kizhakkandani Village, Sivagangai District, the driver of the Tractor (second respondent herein) drove it in a rash and negligent manner and applied sudden brake. In the impact, the claimant was thrown out of the vehicle and sustained fracture injuries in his right leg and multiple injuries all over his body. He was taken to Sivagangai Government Hospital from where he was referred to Sri Manakula Vinayagar Hospital, Pondicherry, where he had taken treatment for about 45 days. According to the claimant, he was 30 years old at the time of accident. He was a sugarcane cutter and earning Rs.9,000/- per month. Due to the injuries he sustained, he could not undertake his work, as before. Therefore, he filed the claim petition claiming compensation of Rs.7 lakhs.

3.The appellant Insurance Company vehemently opposed the claim petition by contending that the petitioner is a gratuitous passenger. A tractor is not meant for transporting passenger and the claimant ought not to have travelled in it. On the other hand, a tractor is meant for carrying out agricultural yields and except the driver, no other person is permitted to travel in such a vehicle. Notwithstanding the same, in case of injuries sustained by a gratuitous passenger, the Insurance Company cannot be mulcted with any responsibility to pay compensation.

4.Before the Tribunal, the second respondent herein, who is the owner cum driver of the Tractor, remained exparte.

5.Before the Tribunal, on behalf of the claimant, he examined himself as PW1 and Dr. Ravinder was examined as PW1 and Exs. P1 to P13 were marked. On behalf of the Appellant-Insurance Company, one Vinayagam was examined as RW1 and Ex.R1, Policy of Insurance was marked. On appreciation of the above documents, as also the arguments advanced on behalf of the claimant as well as the Insurance company, the Tribunal concluded that the claimant travelled as a gratuitous passenger in the Tractor and therefore, the appellant Insurance Company is not liable to pay the compensation. However, the Tribunal directed the Insurance Company to pay the compensation determined by it and to recover it from the owner of the Tractor. As far as quantum of compensation is concerned, the Tribunal directed the appellant to pay a total sum of Rs.1,14,300/- as compensation to the claimant/first respondent herein. Aggrieved by the award passed by the Tribunal directing the appellant to pay the compensation and to recover it, the present appeal is filed.

6.The learned counsel for the appellant-Insurance Company would vehemently contend that the Tribunal erred in fastening the liability on the Insurance Company even though the policy does not cover a gratuitous passenger like the claimant. The claimant ought not to have travelled in such a vehicle and due to his own negligence, he sustained injuries. In such event, the Tribunal ought not to have directed the appellant to pay the compensation amount and to recover it from the owner of the vehicle, who remained exparte before the Tribunal as well as before this Court. Even otherwise, the amount of compensation awarded under various heads are onerous and it is not befitting the nature of injuries sustained by the claimant.

7.On the above contention, this Court heard the counsel for the first respondent/claimant and perused the materials placed.

8.On 23.12.2010, the claimant travelled in the mud guard of the Tractor driven by the second respondent/owner. It is stated that the driver applied sudden brake while driving the tractor, negligently, which resulted in the claimant sustaining fracture injuries in his legs. The claimant was 30 years old at the time of accident. He sustained fracture injuries in his legs for which he had taken treatment in Government General Hospital, Sivagangai and thereafter in Manakula Vinayagar Hospital, Puducherry for about 45 days.

9. A perusal of Ex.P9/Registration Certificate shows that the seating capacity of the tractor is 'one' which is meant only for the driver of the tractor. Further, Ex.R1/Insurance Policy also shows that the tractor can be used only for agricultural purpose. The learned counsel appearing for the appellant also contended that as per Ex.R1/Insurance Policy, the Insurance Company is not liable to pay any compensation to the 1st respondent, who is an unauthorized passenger at the time of accident. The Hon'ble Apex Court has considered the said issue in the judgment reported in (2003(2) SCC 223), [New India Assurance Company Limited Vs. Asha Rani and others], held as follows:

> “"25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods

vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'. ”

9(i). The Hon'ble Apex Court has again considered the said issue in the judgment reported in (2004 (8) SCC 697), [National Insurance Co. Ltd., v. Chinnamma & Others], further held as follows:

> “Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle". A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the

purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment. For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. This appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs.”

9(ii). Further, a Division Bench of this Court also considered the similar issue in the judgment reported in 2018 (2) TNMAC 731 DB, [Bharati AXA General Insurance Co. Ltd., v. Aandi and others], wherein the Division Bench of this Court held as follows:

“50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs.Swaran 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 andOthers Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regardingt he 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.”

9(iii). This Court again considered the said issue in the order dated 21.09.2020 made in C.M.A.No.2147 of 2016 in the case of [The New India Assurance Company Limited Vs. Murugammal and others], at paragraph No.24, held as follows:

“24.In the instant case, the victim having travelled in a mud guard of the Tractor contrary to the policy condition as well as the permit condition, is not covered under the insurance policy. The mud guard of the tractor is not meant for carrying the passenger. Having violated the policy condition, the Insurance Company cannot be mulcted with the responsibility to pay and then recover from the owner of the vehicle."

10. From the award of the Tribunal, it is seen that the 1st respondent traveled only as gratuitous passenger in the 2nd respondent's tractor. Therefore, in view of the findings rendered in the above judgments, this Court is of the considered view that the portion of the award directing the appellant-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent is liable to be set aside and it is hereby set aside. Only the 2nd respondent-owner of the Tractor alone is liable to pay the compensation to the 1st respondent. It is made clear that if any amount was deposited by the appellant and the same was withdrawn by the 1st respondent, the appellant is not entitled to recover the same from the 1st respondent, but the same shall be recovered from the 2nd respondent.

11. As far as compensation is concerned, the Tribunal, in the opinion of this Court, has awarded a just and reasonable amount. For disability, the Tribunal awarded a sum of Rs.60,000/- in total at the rate of Rs.2,000/- per percentage of disability. For loss of income, a sum of Rs.12,000/- was awarded. For pain and suffering Rs.15,000/- was awarded. For extra nourishment, Rs.10,000/- was awarded. For transportation and damages to article, a total sum of Rs.15,000/- was awarded. In all the sum of Rs.1,14,300/- awarded by the Tribunal, in my view, is proportionate to the age, nature of injury suffered and the period of hospitalisation of the claimant. Therefore, I do not find any reason to interfere with the award passed by the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.1,14,300/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent is directed to deposit the award amount along with interest and costs, 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.No.95 of 2011 on the file of the Motor Accidents Claims Tribunal, Villupuram (Principal Sub-ordinate Court, Villupuram). On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the amount lying in the credit of M.C.O.P.No.95 of

2011, if the award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa / krk

To

1. The Principal Sub-ordinate Court,
   The Motor Accidents Claims Tribunal,
   Villupuram.

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

+1cc to Mr.S.Vadivel, Advocate SR.No.60211
+1cc to Mr.M.Tamizhavel, Advocate SR.No.59953
+1cc to Mr.V.S.Sivasundaram, Advocate SR.No.60328

C.M.A.No.2115 of 2014

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