IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.2422 OF 2014
AND
M.P.NO.1 OF 2014

The Branch Manager,
M/s.Iffco Tokio General Insurance Co. Ltd.,
Salem.
... Appellant/2nd Respondent

.Vs.

1. Mrs.Sevanthiammal ... 1st Respondent/Claimant

2. K.Arunachalam ... 2nd Respondent/1st Respondent

PRAYER:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.01.2014 passed in M.C.O.P.No.94 of 2010 by the Subordinate Judge, Motor Accident Claims Tribunal, Mettur.

For Appellant : Mr.E.Rajadurai
For Mr.N.Vijayaraghavan

For respondents : Notice served to R1 and R2

J U D G M E N T

Aggrieved over the award passed by the Tribunal, the insurance company has filed the present appeal challenging the liability as well as the quantum of compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.1,50,000/- for the injuries sustained by him in a road accident that took place on 06.08.2006.

3. The brief case of the claimants is as follows: On 06.08.2006, the claimant and others, totally 20 persons were travelled in a Mahindra LMV Goods vehicle bearing registration No.TN-29-H-2706 from Mecheri Bus stand to Pennagaram and while nearing Erattaikinor Mallikundham, the driver of the van had driven the vehicle in a rash and negligent manner, thereby the van got upset and three persons were died on the spot and the claimants and other passengers sustained injuries. The contention of the claimant is that she sustained injuries on her right elbow, wrist and hest and he was admitted to Government Hospital at Mettur and treated as inpatient from 06.08.2006 to 24.08.2006. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of accident and since the first respondent/owner of the vehicle insured his van with the second respondent/insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the respondents by filing their respective counter affidavit.

5. Before Tribunal, the claimant was examined as PW1 and Ex.P1 to Ex.P4 were marked. On the side of the first respondent, one witness was examined as RW1 and Ex.R1 to R4 were marked. On the side of the second respondent, one witness was examined as RW2 and Ex.R5 and Ex.R6 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.78,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of income	25,000
2	Transportation charges	1,000
3	Damages to clothes	2,000
4	Pain and sufferings	20,000
5	Mental agony, loss of happiness,	15,000
6	Compensation for pain and sufferings	15,000
	Total	78,000

Challenging the quantum of compensation awarded by the Tribunal, the insurance company has filed the present appeal to scale down the compensation.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ insurance company submitted that the Tribunal has erred in directing the appellant to pay compensation to the claimant at the first instance and then recover the same from the owner of the vehicle. He further submitted that the vehicle involved in the accident is a goods vehicle and the claimant and others were travelled as unauthorised passengers and there is a violation of policy condition and therefore, the insurance company cannot be held liable to pay compensation to the claimant and hence, he prayed to allow the appeal.

9. Despite notice served to the first and second respondents, none appeared for them.

10. Now the point for consideration is

1. Whether the insurance company is liable to pay compensation to the claimants.

11. Point

The learned counsel appearing for the appellant/insurance company submitted that one Ms.Chinnakkal, who sustained injuries in the same accident had filed a claim petition in M.C.O.P.No.94 of 2010 and by an order dated 30.01.2014, the Tribunal has awarded compensation and also ordered for Pay and Recovery. He further submitted that the insurance company has preferred an appeal in C.M.A.No.2407 of 2014 against the above MCOP No.95 of 2010 and the same was allowed by this court on 15.12.2020. He further submitted that the legal issues involved in the present case is covered by a decision of this court in the above said appeal and hence prayed to allow the appeal.

12. At this juncture, it is necessary to rely upon a decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, wherein, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

> 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.
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> 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.

In the light of the decisions of the Honourable Supreme court as well as the decision of this Court, there is no grounds to fasten liability as against the insurance company. Therefore, the order passed by the tribunal directing the owner and driver of the mini lorry to pay compensation to the claimants is liable to be confirmed. Accordingly, the point is answered.

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(ii) The entire compensation awarded by the Tribunal shall be paid by the owner of the vehicle.

(ii) The appellant/Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Mettur.

2. The Branch Manager,
   M/s.Iffco Tokio General Insurance Co. Ltd.,
   Salem.

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

C.M.A.NO.2422 OF 2014 AND
M.P.NO.1 OF 2014

AD(CO)
PBS/09/11/2021