



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 02 .03.2021

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1305 of 2017

&

C.M.P.No.6766 of 2017

M/s.National Insurance Company Limited,
1st Floor, R.V.R, Buildings,
No.157, Karamadai Road, Mettupalayam,
Coimbatore and District.

...Appellant/2nd Respondent

/versus/

1. Rangammal,

2. R.K.Subramaniam,

3. K.Nagaraj,

4. Rajamani,

5. S.Maheswari,

...Respondents 1to 5/Petitioners

6. V.Palanisamy,

...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 06.11.2014 made in M.C.O.P.No.358 of 2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.S.Arun Kumar

For R1 to R5 : Mr.Ma.P.Thangavel

For R6 : No appearance

J U D G M E N T

This Appeal is filed by the Insurance Company challenging the award of the Tribunal fixing the responsibility on the Insurance Company to pay compensation to the accident victim and recover the same from the vehicle owner for the violating policy



condition.

2. According to the appellant, the violation of policy condition so grave for which the Insurance Company is not liable to indemnify the vehicle owner or the pay compensation and recover it later from the vehicle owner.

3. The background facts of the case is that, one Kandan @ Kandasamy aged about 72 years while travelling in a pick up van bearing registration No.TN-40-F-0830 on Karamadi to Velliyankadu main road near Maruthurmariyamman Koil, the driver of the Bolero pick up van drew the vehicle in high speed rash and negligently. Due to which, the said Kandan @ Kandasamy fell down from the vehicle and sustained head injury and injuries all over the body. He died on the spot. The accident occurred when the deceased travelling in the goods vehicle along with fertilizer bags for his agricultural purpose. At the time of accident, he was hale and healthy, earning a sum of Rs.1,00,000/- per annum, from his agricultural activities and milk vendor business. His wife, son and daughters, joined together and filed claim petition for a sum of Rs.5,00,000/- .

4. The Insurance Company contested the claim on the ground that the accident occurred when the deceased unauthorisedly travelled in a goods vehicle. The vehicle driver had no valid and effective driving license at the time of accident. Being an unauthorised gratuitous passenger in a goods vehicle, the Insurance Company is not liable to cover the risk.

5. Before the Tribunal, on the side of the petitioner two witnesses and 6 Exhibits were marked in support of the claim. On behalf of the respondent, 1 witness was examined, 3 exhibits were marked.

6. The Tribunal, after considering the rival submissions and the evidence, accepted the plea of the insurance company that the deceased fell down from the goods vehicle due to rash and negligently driving of the van driver. Ex.R.1 the Insurance Policy reveals that, the vehicle was insured under 'Act only Policy'. Ex.R.3, the driving licence of the van driver one Gopalakrishnan S/o.Chandran was only to drive light motor vehicle and the not goods vehicle. There is no valid batch endorsement. However, the Tribunal held that there is a violation of policy condition and the insurance company is not liable to indemnify the 1st respondent, since the vehicle had valid insurance coverage, the insurance company should pay the compensation and later recover the same from the owner of the vehicle. Regarding the quantum, after considering the age and other evidence, awarded a total sum of Rs.2,45,000/- payable to the claimants.



7. In the appeal, it is primarily contended by the Learned Counsel for the Insurance Company that following the judgment of the Hon'ble Supreme Court rendered in National Insurance Company Limited -vs- Kaushalaya Devi & others reported in 2009(2)MLJ 953, the tribunal ought to have totally exonerated the Insurance Company from the liability.

8. Per contra, the Learned Counsel appearing for the claimant would submit that the Courts in India have consistently held that in case of gratuitous passenger and in case of violation of policy condition, if there is valid insurance coverage, the Insurance Company has to pay the claimant and then recover it from the vehicle owner. The said principle has been adopted uniformly by the Courts in order to protect the innocent accident victims, who are unaware of the violation of policy conditions by the vehicle owners.

9. In support of his arguments, the Learned Counsel for the respondent has relied upon the following judgments.

(i). National Insurance Company Limited -vs- Lakhuben Punabhaivaghari reported in 2007 ACJ 2253.

(ii). National Insurance Company Limited -vs- Smt.Urmila and others reported in 2008 ACJ 1381 (DB).

(iii). National Insurance Company Limited -vs- Smt.Kamala and others reported in 2011 ACJ 1550 (DB).

(iv). The New India Insurance Company Limited -vs- Jameela and others reported in 2012 ACJ 1522.

(v). P.Prakash -vs- Thandivelu reported in 2017 (2) TNMAC 34.

The above judgments referred by the learned Counsel for the respondent are from High Courts of Gujarat, Kerala, Patna, Punjab and Haryana and Madras.

10. The judgments referred had not considered the judgment of Hon'ble Supreme Court rendered in National Insurance Company Limited -vs- Kaushalaya Devi & others reported in 2009 (2) MLJ 953 which is cited by the Learned Counsel for the appellant.

11. The Hon'ble Supreme Court in Kaushalaya Devi cited supra judgment has referred the earlier judgments of the Hon'ble Supreme Court which operates the field and had concluded that, gratuitous passenger travelling in a goods vehicle if sustained injury or die while travelling in the vehicle, he or his legal representatives cannot hold the Insurance Company liable.

12. This Court has come across the judgment of the Hon'ble Supreme Court in Mukund Dewangan vs. Oriental Insurance Company Limited reported in (2017) 14 SCC 663, wherein, the goods



13. As far as facts of the case is concerned, want of batch endorsement in the driving license of the Bolero van driver may not be a policy violation to exonerate the Insurance Company. But, the fact that he was a gratuitous passenger travelling in a goods vehicle is a clear case of policy violation.

15. As pointed out by the Learned Counsel for the appellant, there is no evidence to show that the deceased was travelling along with the goods namely fertilizer bag, more over, the vehicle, in which, the deceased was travelling in Bolero Maxi Truck with two seating capacity with open type of body. It is an admitted case that the deceased was travelling in the back open body of the truck and not in the cabin where seat is provided. Even assuming that the deceased was travelling along with the goods as the owner of the goods, he is not permitted to travel on the back open body of the truck instead of cabin. Therefore, there is force in the submission made by the learned counsel for the appellant that the Insurance Company cannot fastened with liability to pay for the gratuitous passenger, who has travelled in the open truck instead of the cabin provided for passenger.

16. On seeing the R.C.Book of the vehicle which is marked as Ex.R.2 and Insurance Policy Ex.R.1, this Court finds that the Bolero Maxi Truck vehicle with two seating capacity has been insured under the National Insurance Company, under the 'Act only Policy' and no extra premium paid for the passenger.

17. In New India Assurance Company Limited vs. Asha Rani and Others reported in 2003 (2) SCC 223, has held as below:-

"26. In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any



passenger travelling in a goods vehicle, the insurers would not be liable therefor."

18. This judgment is followed by the Hon'ble Supreme Court in all other subsequent cases including Kaushalaya Devi case cited supra. The said dictum so far not overruled by the Hon'ble Supreme Court. In this case, though the vehicle had capacity to carry two persons including the driver, the insurer had not opted to pay extra premium to cover the liability of the passengers claim. Furthermore, the injured passenger had not travelled in the cabin but in the open truck and had invited the accident. When there is no insurance coverage for the passenger and the said passenger had volunteered the risk of his life by travelling in the open truck instead of the cabin, the Insurance Company cannot be fastened with liability.

19. This Court finds that the in the given facts of the case liability to pay and thereafter recover the compensation is not appropriate. Therefore, the liability cannot be fastened on Insurance Company, with liberty to recover from the insurer, when the insurer had not paid any additional premium for the passenger.

20. For the reasons, this Court holds that the Appeal has to be Allowed. Accordingly, the Insurance Company is exonerated from liability to pay the compensation. The claimant is at liberty to proceed against the owner for recovery of the award amount. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge,
Gobichettipalayam.



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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13833

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.13436

C.M.A.No.1305 of 2017

GJ(CO)
RGA(20/09/2021)