



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1425 of 2010

V.Maliammal ... Appellant/Petitioner
-vs-

1.P.Bharathi

2.D.Selvam

3.The Branch Manager,
New India Assurance Company Ltd.,
Dr.Thirumalai Plaza(1st Floor)
82, New Dharapuram Road,
Palani-624 601,
Dindigul District.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the award dated 22.04.2010 passed in M.C.O.P.No.2591 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.2), Madurai.

For Appellant : Mr.K.C.Gurusamy
For R3 : Mr.D.Sivaraman
For R1 & R2 : No appearance

JUDGMENT

This appeal is directed against the judgment and award of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.2), Madurai, passed in M.C.O.P.No.2591 of 2002, dated 22.04.2010. The claimant is the appellant.

2.The brief facts of the case are that, on 11.06.2000, at about 8.00 p.m., the appellant along with her relatives travelled in a van from Jakkampatty to Usilampatty to attend ear-piercing function of her relative Rajeswari. It is alleged that the driver of the van drove the vehicle in a rash and negligent manner and hence, the van capsized and they have sustained injuries. Though she claimed Rs.30,000/ as claim, the Tribunal awarded a sum of Rs.10,000/-.



3. Heard Mr.K.C.Gurusamy, learned counsel appearing for the appellant and Mr.D.Sivaraman, learned counsel appearing for the third respondent and perused the materials available on record.

4. In this case, admittedly, the appellant travelled in a goods vehicle. The Tribunal, after analysing the evidence, came to the conclusion that the appellant was a gratuitous passenger in the goods vehicle hence, directed the driver as well as the owner of the vehicle to pay the compensation and the liability of the Insurance Company has been exonerated. This appeal has been filed mainly to shift liability on the insurer.

5. In **Bharati AXA General Insurance Co. Ltd., vs. Aandi and others**, reported in **2018 (2) TANMAC 731**, it has been held by the Division Bench of this Court that even pay and recovery cannot be ordered for the person, who travelled in a goods vehicle as gratuitous passenger. The relevant paragraphs are extracted hereunder:

"50. In fact, we find that in none of the judgements referred to viz., **National Insurance Co., Ltd., vs. Swaran Singh and others**, 2004(1) TN MAC 104 (SC) : 2004(3) SCC 297 ; **Mangla Ram v. Oriental Insurance Co. Ltd.**, 2018(1) TN MAC 681(SC) : 2018(5) SCC 656; **Rani & ors. v. National Insurance Co Ltd., & ors.**, 2018(2) TN MAC 278 (SC) : 2018(9) Scale 310 ; and **Manuara Khatun and others v. Rajesh Kumar Singh and others**, 2017(1) TN MAC 289(SC) : 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 v. 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 v. Asha Rani and others**; and **National Insurance Co. 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."

6.Keeping in view, the recent decision referred above, I find no reason to interfere with the findings of the Tribunal. In such view of the matter, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:

1.The Additional District Judge cum

Fast Track Court No.2,

Motor Accident Claims Tribunal, Madurai.

2.The Record Keeper-2 COPIES

Vernacular Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.D.SIVARAMAN, Advocate (SR-4569[F] dated 11/02/2021)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-4733[F] dated 12/02/2021)

ORDER MADE IN

C.M.A(MD) .No.1425 of 2010

10.02.2021

KM (17.03.2021) 3P 6C

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