BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	09.02.2021
Date of Judgment	12.05.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1184 of 2018
and
CMP(MD)No.12196 of 2018

The New India Assurances Co. Ltd.,
Rep. by its Branch Manager,
No.480, Sekkalai Road,
Karaikudi Town, Karaikudi Taluk,
Sivagangai District. : Appellant/2nd Respondent

Vs.

1.Arumugam
2.Selvi : R1 and R2/Petitioners
3.Marimuthu : R3/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, made in MCOP No.274 of 2016, dated 21.08.2017.

For Appellant : Mr.I.Robert Chandrakumar

For R1 and R2 : Mr.S.Pugalendhi

For 3rd Respondent : Dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, made in MCOP No.274 of 2016, dated 21.08.2017.

2.The short facts of the case is that on 08.04.2015, the deceased Kannan @ Kannappan and some other persons went in a TATA Ace Van TN-63-AE-0996 from Sivagangai to Devakottai for the work at Devakottai and when the Van was nearing Keelavayal, the driver of the Van drove it in a rash and negligent manner and due to it, it was capsized. In the accident, Kannan @ Kannappan sustained injuries all over his body and he was taken to Devakottai Government Hospital and subsequently, he was referred to Madurai Government Rajaji Hospital, where he succumbed to injuries. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.10,00,000/- for the death of the deceased.

3.The claimants have stated that the deceased was 23 years at the time of accident and he was doing Mason work, thereby he was earning Rs.15,000/- per month. It is alleged that the said Kannan @ Kannappan died only due to the negligence of the driver of the offending vehicle.

4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witness was examined and marked 7 documents. On the side of the Appellant Insurance Company, 2 witnesses was examined and 2 documents were marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Van has caused the accident and awarded compensation of Rs.8,05,000/- together with interest @ 7.5% p.a. Aggrieved over the same, the Appellant Insurance Company is before this court.

7.Heard the learned counsel appearing for the appellant Insurance Company and and the learned counsel appearing for the respondents 1 and 2/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant Insurance Company/2nd respondent argued that the deceased was a gratuitous passenger and no additional premium was paid for the persons travelled in a goods carriage vehicle, seated on the back side of the vehicle and at the time of accident, the alleged persons were travelling in the goods carriage vehicle and premium paid only for the driver only and hence, the appellant/2nd respondent is not liable to pay the compensation. For that, the learned counsel appearing for the appellant Insurance Company/2nd respondent submitted the decision reported in ***2016(2) TN MAC 376 (V.Karuppiah (died) Vs. B.Muthulakshmi).***

9.On the other hand, the learned counsel appearing for the respondents 1 and 2/claimants argued that the deceased and some other persons travelled with their working materials to do construction work and they were not travelling as gratuitous passengers and the offending vehicle was insured with the Appellant Insurance Company/2nd Respondent and hence, the appellant/2nd respondent is liable to pay the compensation. For that, the learned counsel appearing for the respondents 1 and 2/claimants submitted the following rulings:-

(1).2018(2) TN MAC 731 (DB) (Bharati AXA General Insurance Co., Ltd., Vs. Aandi and others);

(2).2009(1) TN MAC 1 (FB) (United India Insurance Co. Ltd. Vs. Nagammal and others);

(3).2019(2) TN MAC 433 (SC) (Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited);

10.In this case, the insurance policy was carefully perused. The insurance policy was marked as Ex.R2. In the insurance policy, the coverage was for the driver alone. In the claim petition and in the evidence, it is stated that on 08.04.2015, the deceased and others were travelling in the offending vehicle to Devakottai for doing construction work and while the offending vehicle proceeding near Keelavayal, the driver of the above Van drove it in a rash and negligent manner and due to it, it accident occurred.

11.On the side of the Appellant Insurance Company, it is stated that the deceased and others travelled in the offending vehicle as 'gratuitous passengers'. But on the side of the claimants, it is stated that the deceased and others travelled with their working materials and hence, they are travelled as the custodian of their materials and hence, the deceased is not a gratuitous passenger and hence, the Insurance Company is liable to pay the compensation.

12.On perusal of the insurance policy Ex.R2, premium was paid only for the driver. No additional premium was paid for the persons, who were travelling in the vehicle. It is admitted fact that at the time of accident, no goods of the owners were carried out. At the time of argument, the learned counsel appearing for the respondents 1 and 2/claimants submitted that the deceased and others, travelled with their materials for doing construction work and hence, the deceased travelled as a custodian of the materials in the offending vehicle. On careful perusal of the claim petition, evidence of PW1, PW2 and RW1, it reveals that the offending vehicle is a goods carrying vehicle and it was not hired for carrying the goods. But the deceased and others travelled in the above vehicle for doing their work and hence, it is held that the deceased was not travelled as custodian of the goods. Hence, the argument put forth on the side of the respondents 1 and 2/claimants stating that the deceased was travelled as a custodian of his work materials for doing construction work and not as gratuitous passenger is not at all acceptable. Hence, it is held that at the time of accident, the deceased and others travelled as gratuitous passengers and therefore, the Insurance Company is not liable to pay the compensation and only the owner of the offending vehicle is liable to pay the compensation to the claimants.

13.It is settled law that travelling as an unauthorized passenger in a vehicle amounts to violation of policy condition. Hence, it is held that the Insurance Company is not liable to pay the compensation to the claimants and only the owner of the vehicle is liable to pay the compensation. The tribunal without considering the above facts, has erroneously come to the conclusion that the Insurance Company is liable to pay the compensation to the claimants and then, recover the same from the owner of the vehicle.

14.In fine, the Civil Miscellaneous Appeal is **allowed** by setting aside the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay the award. It is open to the claimants to claim the award amount, which was awarded by the Tribunal, from the owner of the vehicle/3rd respondent herein by filing appropriate proceedings, in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount already deposited, if any, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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<u>Note :</u>

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Sivagangai.

2.The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai (2 COPIES)

Judgement made
in CMA(MD)No.1184 of 2018
12.05.2021

KMV(CO)
TR(09.06.2021) 4P 4C