IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022

PRONOUNCED ON : 07.06.2022

C O R A M :

The Hon'ble Mrs. Justice NISHA BANU

C.M.A.Nos.2530 and 2533 of 2012

1.Gnanasekaran

2.Chandirammal ... Appellants/Petitioners in CMA.No.2530/2012

1.Gnanammal
2.Sudhakaran
3.Senthilkumaran ...Apppellants/Petitioners in CMA.2533/2012

Vs

1.Muthu
2.The New India Assurance Co.Ltd.,
Officer's Line, CSI Complex
Vellore Main Road, Vellore-1 ... Respondents/Respondents in both CMAs.

PRAYER : CMAs filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.1 and 2 of 2007 on the file of Motor Accident Claims Tribunal, Additional District & Sessions Judge, [Fast Track Court, Tirupattur] dated 28.04.2008.

For Appellants : Mr.V. Parivallal
In Both CMA's

For Respondents : R1- No appearance
In Both CMA's R2-Mr.J.Chandran

JUDGMENT

The above appeals are filed by the claimants mainly on two grounds, firstly, the finding of the tribunal that the 2nd respondent insurance company is not liable to pay the compensation and that the tribunal not given any direction to the insurance company to satisfy the award and recover from the first respondent in case of breach of policy; secondly, the tribunal has not awarded proper compensation to the claimants in both MCOPs, who are the parents of the deceased Lakshmi and Prithivi.

2. The facts of the case in brief is as follows:-

On 11.05.1998 at about 4.30 p.m.,when the claimants' daughter Lakshmi and Prithvi along with others were travelling in the Mini Lorry bearing Reg.No.TN-01-8559, from Dharmapuri to Thirupattur, driven by the first respondent who was also the owner of the vehicle, drove in a rash, speedy and negligent manner and when he was unable to control the vehicle on right side of the bridge, the lorry hit the Tamarind Tree and capsized. In the said accident, Lakshmi and Prithvi (deceased) who travelled as cooly worker, were succumbed to severe injuries. Mathikonpalayam Police registered a case u/s.279, 337, 338 and 304(A) IPC in Crime No.524 of 1998.

3. The parents of the deceased filed MCOP.No.1 and 2 of 2007 respectively claiming Rs.2,00,000/- as compensation stating the deceased was a cooly worker under the 1st respondent and was earning Rs.2000/- per month.

4. The 2nd respondent insurance company filed counter before the tribunal, submitting the deceased in both cases were not cooly worker in the mini lorry. She was an unauthorized passenger among the 55 passengers in the insured vehicle. Hence the 2nd respondent-Insurance company is not liable to pay any compensation.

5. First respondent was set exparte before the Tribunal. Both sides examined witnesses on their side and produced documents to substantiate their contentions before the Tribunal.

6. The tribunal answered the issues framed by it by observing that from the oral evidence and Ex.P.1-FIR, it is clear that the accident occurred due to negligence and speed driving of the first respondent. The lorry was driven by the first respondent who was also the owner of the said vehicle. The said lorry was used for taking nearly 55 unauthorized passengers for hire charges. The conditions of permit and insurance policy does not permit travelling of unauthorized passengers and the premium for insurance is covered only to driver, cooly worker and cleaner. Ex.P.4 also shows that no premium is paid by the first respondent for covering accidents. The tribunal further pointed out that no document has been produced by the claimants to prove that the deceased have been travelled as cooly worker in the said lorry. In respect of such load man or cooly worker, no trip sheet has been marked as document on the said date of accident showing such trip carrying load was assigned. The tribunal further found that as per Ex.P.1, the deceased along with other passengers hired the lorry to attend a wedding at

Erode and while returning from marriage, the lorry met with accident.

7. The principles laid down in the decision reported in 2003 ACJ 468 (Oriental Insurance Company Limited vs. Devireddy Konda Reddy and others) has been referred by the Tribunal and held that the deceased is an unauthorised passenger and the 1st respondent lorry is a goods vehicle and not permitted to carry passengers and that no premium has been paid for coverage of accident victims, therefore, 2nd respondent insurance company is not liable to pay any compensation to the claimants. Further, it was pointed out that due to negligence of the 1st respondent, the accident occurred and the 1st respondent is solely liable to pay the compensation and Ex.P.3 and P.4 would go to show that 1st respondent had valid driving licence and RC book to drive the vehicle.

8. The learned counsel for the appellants/claimants has placed reliance on the following citations in support of their contentions that contentions of the FIR is not relevant to exonerate liability of the insurance company.

(i) 2019 ACJ 2802 [Anu Bhanvara and others Vs. Iffco=Tokio General Insurance Co.Ltd., and others]

(ii) 2019 ACJ 1921 [Divisional Manager, Royal Sundaram Alliance Insurance Co.Ltd., Vs. Subalakshmi and others]

9. The citations referred by the learned counsel for the appellants in support of his contention for directing the insurance company to pay and recover the compensation, does not support his case as the facts and circumstances in the cited cases are entirely different.

10. As per the New Act that is, after amendment, Section 2 (14) of the Motor Vehicles (Amendment) Act, 1994 reads as follows:-

> "2(14) "goods carriage" 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;"

A bare reading of the provisions of the Motor Vehicles Act pertaining to “goods vehicles” makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. Therefore, it is settled proposition of law that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

11. In respect of quantum of compensation is concerned, taking into account the claim made by the parents of the deceased that the deceased were working as cooly and also taking into consideration the attendant factors, awarded Rs.1,20,000/- as compensation in both MCOP cases.

12. Taking into account the legal position on the one hand and the evidence, facts and circumstances of case on the other hand, this court finds no reason to interfere with the award of the Tribunal. In such view of the matter, the award passed by the Tribunal is confirmed. Accordingly, the appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents claims Tribunal,
   Additional District & Sessions Judge,
   [Fast Track Court], Tirupattur.

Copy To

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

+1cc to Mr.J.Chandran, Advocate SR.No.32717

PMK(CO)
GMY(05/07/2022)