IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.3195 of 2014
and
M.P.No.1 of 2014

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
Puducherry. ... Appellant

vs.

1.Mrs.Anjali

2.Mr.Rajasekar

3.Miss.Rajalakshmy

4.Mr.S.Kanagasabai ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Award passed in M.C.O.P.No.1115 of 2007 on 30.06.2014 on the file of the Motor Accident Claims Tribunal / Presiding Officer, III Additional District - Judge (FAC) at Pondicherry.

For Appellant : Mr.J.Chandran
For Respondents : Mr.C.Sundaresan [R1 to R3]
R4 – Served - No Appearance

JUDGMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal / Presiding Officer, III Additional District - Judge (FAC) at Pondicherry in M.C.O.P.No.1115 of 2007 on the ground that the deceased Markkapanthu was a gratuitous passenger.

2. The brief facts that are necessary for appreciating the issue on hand are as follows and the parties are referred to in the same ranking as before the Tribunal.

3. The petitioners are the legal representatives of one Markkapanthu, aged 46 years and doing a fish mongering business. The 1st petitioner is the wife and the petitioners 2 and 3 are children of the deceased Markkapanthu. It is their case that on 02.07.2007, the deceased Markkapanthu, who was engaged in the business of supplying fish from Puducherry to Kerala was travelling in the light motor vehicle belonging to the 1st respondent and the vehicle was insured with the 2nd respondent with his goods. While traveling so and on account of rash and negligent driving of the driver of the vehicle a Tata 207, the same had hit the lorry parked in the road side and as a result

of which, the deceased Markkapanthu sustained severe head injury and the said Markkapanthu died on account of the said injuries. The petitioners had claimed a compensation of a sum of Rs.10,00,000/-.

4. The 1st respondent remained exparte and it was the 2nd respondent/Insurance Company which had filed its counter, in which, they had contended that the coverage of policy was only for the owner cum driver and three employees and therefore, they were not liable to compensate the compensation.

5. The Tribunal, on considering the evidence had held that the accident had occurred only on account of rash and negligent driving of the driver of the 1st respondent's vehicle. The Tribunal has also rejected the contention of the 2nd respondent that the deceased was an unauthorised passenger. The Tribunal had held that the deceased had travelled only as owner of the goods. Therefore, he cannot be termed as gratuitous passenger. Ultimately, the compensation for a sum of Rs.9,90,000/- was awarded.

6. The 2nd respondent/Insurance Company has filed the above appeal

stating that the deceased was a gratuitous passenger. The learned counsel would submit that RW1 in his evidence clearly stated that the deceased was not employed by him either as a cleaner or driver and further, RW2, the official of the Insurance Company stated that as per the terms of the policy, the coverage was for the owner cum driver, driver cum cleaner. The deceased did not fall within any of these categories. Therefore, he has to necessarily be considered a gratuitous passenger. Therefore, the award has to be necessarily be set aside.

7. The learned counsel appearing for the claimants on the other hand would contend that the deceased has travelled as owner of the vehicle and therefore, he is automatically covered under the provisions of Section 147 of the Motor Vehicles Act. Therefore, the award cannot be called into question.

8. Heard the learned counsels on either side and perused the materials on record.

9. The only point for consideration is whether the deceased Markkapanthu is a gratuitous passenger or otherwise. The case of the

petitioners is that the deceased who is a fish monger was selling fish to the markets at Kerala and he has been travelling in the 1st respondent's vehicle for this purpose. It is not their case that the deceased has travelled either as owner of the vehicle, driver or cleaner of the vehicle. But, he has travelled only as owner of the goods. The Insurance Company would state that the policy covers only the owner, driver and the cleaner. Section 147 of the Motor Vehicles Act provides for the policy of the insurance and the limits of the liability therein. Section 147 (1) (b) talks about the class of persons who are covered. The provision would read as follows:

*"**147. Requirement of policies and limits of liability.** – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub – section (2) –

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place;

Explanation. – For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, *if the act or omission which led to the accident occurred in a public place."*

10. A reading of the above Section would show that the owner of the goods or the authorised representative who are carried in the motor vehicle are covered by the policy of insurance. The deceased has travelled only as the owner of the goods. The award of the Tribunal does not require any re-consideration.

11. In the result, this Civil Miscellaneous Appeal stands dismissed and the Award passed in M.C.O.P.No.1115 of 2007 dated 30.06.2014 on the file of the Motor Accident Claims Tribunal / Presiding Officer, III Additional District - Judge (FAC) at Pondicherry is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2022

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
   Presiding Officer,
   III Additional District - Judge (FAC),
   Pondicherry.

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

P.T.ASHA, J.,

ssn

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