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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

C.M.A.(MD)No.1320 of 2009

Lakshmi ... Appellant/ Claimant

Vs.

1.P.Krishnamoorthy

2.The Branch Manager,
The India Assurance Company Ltd.,
No.30, Samyannan Pillai Kovil Street,
Virudhungar. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Award made in MCOP.No.59 of 2007, dated 02.09.2008, on the file of the Motor Accident Claims Tribunal / Sub Court, Aruppukottai.

For Appellant : Mr.M.Jothi Basu

For Respondent No.2 : Mr.N.Dilipkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the

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appellant against the Judgement and Award made in MCOP.No.59 of 2007, dated 02.09.2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Arupukottai.

2. The appellant / claimant filed the said claim petition in MCOP.No.59 of 2007, on the file of the Motor Accident Claims Tribunal, Sub Court, Arupukottai claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained by her in the accident.

3. The facts of the case is that on 06.09.2006, when the appellant was travelling in a Load Van bearing Regn. No. TN 60 A 1495 (407) from Ramasamipuram to Nenmeli Mettupatti for giving Sridhana to her relative's daughter, the said vehicle was driven by its driver in a rash and negligent manner and the vehicle capsized, as a result of which, the appellant / claimant sustained grievous injuries all over the body. Hence, she made the claim petition.

4. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a total sum of Rs.80,000/- as compensation.

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5. Not being satisfied with the compensation Awarded, the claimant has filed the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

6. The learned counsel appearing for the appellant submitted that the appellant is the poor claimant and she had lost her four right fingers in the said accident. He would further submit that the claimant should not be directed to run pillar to post for receiving compensation amount and the trial Court failed to note that the 1st respondent, who is the owner of the vehicle, was set ex parte before the Tribunal. He further contended that the vehicle is duly insured with the Insurance Company and the accident took place when the policy was in force and that the trial Court ought to have seen that the 1st respondent, owner of the vehicle, allowed the driver to drive the vehicle along with gratuitous passengers. He further submitted that the learned trial Judge erroneously passed an order stating that the first respondent has to pay the compensation amount. So, in respect of that he addressed that the Court may direct the Insurance Company to pay the amount at the first instance and recover the same from the owner of the vehicle. In support of his contention, the learned counsel

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appearing for the appellant relied on the Judgment of this Court reported in ***2018(2) TNMAC 273 (SC) in the case of (Shivaraj Vs. Rajendra and another).*** The relevant paragraphs No. 9 and 10 of the said order reads as follows:

> *"9. The High Court, however, found in favour of respondent No.2 (Insurer) that the appellant travelled in the Tractor as a passenger which was in breach of the policy condition, for the Tractor was insured for Agricultural purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the Tractor. Thus, it would follow that the Appellant travelled in the Tractor as a passenger, even though the Tractor could accommodate only one person namely the Driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the Tractor. That conclusion reached by the High Court, in our opinion is un-exceptionable in the fact situation of the present case.*
>
> *10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (Appellant) with liberty to recover the same from the Tractor Owner, in view of the consistent view taken in that regard by this Court in National Insurance Co., Ltd., V. Swaran Singh and others., 2004(3) SCC 297; Mangala Ram V. Oriental Insurance Company Ltd., 2018(1) TNMAC 681 (SC); 2018(5) SCC 656; Rani and others V. National Insurance Company Limited and others 2018(9) SCALE 310; and including Manuara Khatun and others V. Rajesh Kumar Singh and others,, 2017(4) SCC 796. In other words, the High Court should have partly allowed the appeal preferred*

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by the respondent No.2 . The appellant may, therefore, succeed in getting relief of direction to respondent No.2 – Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the Tractor Owner (Respondent No.1)"

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that statutory Rule cannot be overruled and the liability cannot be fastened on the Insurance Company in violation of statutory Rule. In support of his contention, the learned counsel appearing for the 1st respondent relied on the Judgment of the Hon'ble Supreme Court reported in ***2004 (2) SCC (National Insurance Co., Ltd., Vs. Baljit Kaur and others).*** The relevant paragraph Nos.18 to 20 of the said order read as follows:

"*18. The observations made in this connection by the Court in Asha Rani case to which one of us, Sinha J., was a party, however, bear repetition: (SCC p. 235, para 26)*

"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-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 the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

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19. In Asha Rani it has been notice that sub-clause (i) of clause (b0 of sub-section (1) of Section 147 of the 1988 Act speaks the liability which may be incurred by the owner of the vehicle in respect of death of the bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger – carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who where either contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

He has also relied on another Judgment of the Hon'ble Supreme Court in the case of ***Branch Manager Vs. Radhika and others (2021) SCC online Mad 2861.*** The relevant portion of the said order reads as follows:

"*29. In view of the settled position of law that in case of a gratuitous passenger, the Insurance Company is exonerated from any liability, the impunged Award passed against the appellant Insurance Company has to be set*

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aside by this Court.

30. In the result, the impugned Award, dated 21.04.2015 passed in MCOP.No.762 of 2012 against the appellant Insurance Company is hereby set aside and the appeal is allowed.

31. The owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.762 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents / claimants through RTGS, within a period of two weeks thereafter."

The learned counsel appearing for Insurance Company / 2nd respondent further submitted that the appellant travelled as a gratuitous passenger and the lower Court also found out the same and hence, the Insurance Company is not liable to pay the compensation.

8. The Tribunal, on consideration of the materials available on records, has held that the claimant travelled in the vehicle as a gratuitous passenger, as against the policy conditions in the Insurance Company. The vehicle is meant for load van and it is not permitted for carrying gratuitous passengers and that since the claimant sustained injuries by travelling as gratuitous passengers in a load van, the insurance company is not liable to

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pay the compensation and that the owner of the vehicle alone is liable to pay the compensation and awarded a sum of Rs.80,000/- as compensation for the injuries sustained by the claimant.

9. Aggrieved over the findings given by the Tribunal, the claimant has preferred this appeal.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. From a perusal of the records it is seen that the vehicle is insured with the second respondent herein / Insurance Company. The vehicle was meant for carrying the load and not gratuitous passengers. The Insurance policy was taken for the vehicle only as a load van. The claimant has sustained injuries by travelling in the load van as a gratuitous passenger. Since it is a violation of policy condition, as rightly held by the Tribunal, the Insurance Company is not liable to pay the compensation and the owner of the vehicle alone is liable to pay the compensation. Under such circumstances, this Court is not inclined to interfere with the findings rendered by the Tribunal with regard to the liability to pay the

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compensation.

11. As regards the quantum of compensation, the claimant has sustained 44% disability due to the accident. The Tribunal has awarded a sum of Rs.66,000/- for permanent disability, Rs.10,000/- for pain and suffering, Rs.3,000/- for extra nourishment, Rs.1,000/- for transportation. In total, the Tribunal has awarded a sum of Rs.80,000/- as compensation. I am the considered view of this Court that the compensation awarded by the Tribunal is just and reasonable and it does not warrant any interference by this Court.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

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To

1. The Motor Accident Claims Tribunal / Sub Court, Aruppukottai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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A.A. NAKKIRAN, J.,

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