BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**10.12.2021**
DELIVERED ON	**11.01.2022**

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD).No.1271 of 2011

Bajaj Allianz General Insurance Co. Ltd.,
Door No.11, Office No.6-A,
Peoples Park, III Floor,
Government Arts College Road,
Coimbatore 641 018. ...Appellant/R-3

Vs.

1.Danapal
2.Kanagavalli ...R-1 & R-2/Petitioners
3.S.Santhana Gopal
4.K.Ganesan ...R-3 & R-4/R-1 & R-2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 09.04.2011 made in M.C.O.P.No.214 of 2008 on the file of the learned Motor Accident Claims (Sub Court), Kulithalai and allow this appeal.

For Appellant :Mr.S.Srinivasa Ragavan
For R-1 & R-2 :Mr.N.Sudhagar Nagaraj
For R-3 & R-4 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order, dated 09.04.2011 in M.C.O.P.No.214 of 2008 passed by the learned Motor Accident Claims (Sub Court), Kulithalai.

2.It is a case of fatal accident. On 22.06.2008, morning at 08.45 a.m., the deceased, namely Patturoja was travelling in a Mini-door van bearing Regn. No.TN-33-AJ-4765 belongs to the 4th respondent herein. The van was driven by the 3rd respondent herein, Keeranur – Panchapatti Road, near Karaiyampatti, the driver of the Mini-door van drove the vehicle from north to south in rash and negligent manner and when the van suddenly turned an eastern side the van capsized upside down. Due the said accident, the said Patturoja died.

3.The claimants have filed a petition in M.C.O.P.No.214 of 2008 on the file of the learned Motor Accident Claims (Sub Court), Kulithalai, seeking compensation.

4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 & P.W.2 and marked four documents as Exs.P.1 to P.4 and two witnesses were examined as R.W.1 & R.W.2 and Ex.R.1 and Ex.R.2 were marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondent and also on appreciating the evidences on record, directed the appellant/insurance company to pay a sum of Rs.4,26,000/-as compensation. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

6.Heard on either side. Perused the material documents available on record.

7. The claimants have filed a claim petition in MCOP 214 of 2008 for claiming compensation for the death of their mother who died in the road accident. On 22.06.2008 at 08.45 am, when she was travelled in the Mini-door van bearing Regn. No. TN 33 AJ 4765 as owner of goods. The driver of the Mini-door van drove the vehicle from north to south in rash and negligent manner and when the van turned suddenly an eastern side the van capsized upside down. In the said accident, the deceased sustained grievous injuries and died in the hospital.

8. The Tribunal has awarded a sum of Rs. 4,26,000/-, as compensation with 4.5% interest. Aggrieved by the award the present Appeal has been filed by the appellant/insurance company. Since the van was insured with the appellant/insurance company the tribunal has fixed liability on the appellant/insurance company.

9. At the time of accident the insurance policy of the Mini-door Van was in existence.

10.The learned counsel appearing for the appellant/insurance company raised an objection that the deceased was travelled as an unauthorised passenger in Goods vehicle. Therefore, the appellant/insurance company is not liable to pay any compensation to the claimants. He further contented that the van is a Goods vehicle. As per the averments in the claim petition the deceased travelled as owner of goods (சீர்வரிசை பொருட்கள் ஏற்றிக்கொண்டு) for ceremony of her grandchildren.

11. One of the claimant was examined as PW1. He also deposed that the deceased was travelled in the Mini-door van as owner of Goods. One of the eyewitness was examined as PW2. He also stated that they went for relative's function.

12. The First Information Report/Ex.P.1 also discloses the fact that that the passengers were travelled in the Mini-door van for attending function.

13. The learned counsel appearing for the Appellant has relied upon a judgment reported in ***2009(1) CTC*** in the case of ***Branch Manager, United India Insurance Company Ltd., Branch Office, Nethaji Bye Pass Road, Dharmapuri Town Vs. Nagammal and two others***, and the paragraph No.31 is extracted hereunder:

....

"31.Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:

(i)The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.

(ii)Section 149 envisages the defences which are open to the Insurance Company, Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii).Under Section 147 the Insurance company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv)Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of 'pay and recover' as statutorily recognized in Section 149 (4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v)Where, by relying upon the decision of the Supreme Court in ***Satpal Singh's case****, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.*

(vi) No such direction can be issued by any Trial Court to the Insurance Company to pay and

*recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in **Baljit Karur's case** merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.*

*(vii) Where, however, the matter has already been decided by the Trial Court before the decision in **Balajit Kaur's case**, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of 'pay and recover' should be applied or as to whether claimant would be left to recover the amount from the person liable i.e., the driver of the owner, as the case may be".*

14. There is no doubt that the appellant/insurance company is not liable to pay any compensation when the deceased was travelled in a Goods vehicle as unauthorised passenger.

15. Eventhough, number of passengers were travelled, the deceased was travelled as owner of Goods.

16. In the case on hand, the deceased was travelled as owner of Goods, not as an unauthorised passenger. Hence, the Tribunal has rightly fixed the liability on the Appellant/Insurance Company.

17.Finally, this Civil Miscellaneous Appeal stands dismissed by confirming the award and decree in M.C.O.P. No.214 of 2008, passed by the learned Motor Accident Claims/Subordinate Court, Kulithalai. The appellant/Insurance Company is directed to deposit the entire award amount, within a period of six weeks, from the date of receipt of copy of the order. After depositing the amount, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note: 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

The Subordinate Judge,
Motor Accident Claims Tribunal,
Kulithalai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-1221[F] dated 11/01/2022)

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