BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.08.2022

Pronounced on : 12.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.496 of 2022

Branch Manager
Shri Ram General Insurance Company Limited.,
Tirunelveli. ...Appellant / 2nd respondent.

Vs

1.Muthu ... 1st respondent / claimant

2.Sudalaikani ... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 07.11.2019 passed in M.C.O.P.No.241 of 2016 on the file of the Additional Motor Accident Claims Tribunal Judge and Additional Subordinate Judge of Tenkasi by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For R1 : Mr.S.C.Herold Singh

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.241 of 2016 on the file of Motor Accident Claims Tribunal Judge and Additional Subordinate Judge of Tenkasi. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 09.05.2016, at about 1.30 p.m., the petitioners and others travelled in a load auto bearing registration number TN 69 AK 6915 along the Mayaman Kurichi road towards Aavudaisangu kiln, the driver of the lorry drove the vehicle in a rash and negligent manner, dashed against the cattle and the auto capsized. The petitioner sustained injuries. The petitioner was given first aid in Alangulam Pushpalatha Hospital and then he was admitted in Tirunelveli Sudharsan private hospital. The petitioner claimed a sum of Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed by the second respondent in the claim petition, is as follows:

The first respondent was not having valid driving license at the time of accident. The first respondent failed to inform the incident within 30 days. The manner of accident is wrongly stated in the petition. The claim is excessive. The second respondent is not liable to pay compensation.

4.One witness was examined and nine documents were marked on the side of the petitioner. One witness was examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.1,89,657/- as compensation.

5.Against the award, the appellant approached this Court by way of this appeal on the following grounds:

The Tribunal failed to note that at the time of accident, the deceased was travelling in a vehicle as an unauthorized passenger. At the time of accident, there was no goods in the said vehicle and the petitioner and others travelled to purchase onion saplings. Nobody is permitted to travel in a goods vehicle for purchasing some goods. The petitioner and others were gratuitous passengers and they did not travel as the owner of the goods or the representatives of the owner of the goods. The claimant failed to prove that he was a permitted passenger or the owner of the goods.

6.On the side of the appellant it is stated that only driver can travel in a load auto. In the First Information Report, the claimant has mentioned that he was an agriculturists. He has deposed that himself and his wife were travelling in a load auto along with the driver. There was no goods available at the time of accident. The claimant and his wife were not the owners of any goods. They travelled only as gratuitous passenger. The appellant is not liable to pay compensation.

7.On the side of the appellant, a judgment of this Court reported in **2021(1) TN MAC 599** in the case of **Reliance General Insurance Co.Ltd., Vs Kathir and others,** is cited, wherein it held that,

> "*Goods Van - Person travelling in Goods Van, whether Owner of goods or Gratuitous passenger - Tribunal holding Insurer liable to pay and recover, if, proper - Specific case of Injured / Claimant that he was carrying on business in plastic goods and was returning in Van along with others as Owner of*

goods - No goods carried in Van at time of accident - No evidence to show that Claimant is a Dealer or Businessman in Plastic goods - No evidence to show place of business or place from where he procured plastic goods - No evidence as to whom Claimant sold plastic goods and returning back - Absence of basic materials to determine whether Claimant travelled in Goods Van as Owner of goods and returning back after trading same - Mere travelling of Claimant sitting in Cabin of Van would not extend benefit, when basic element of being Owner of goods carried in Van and returning after selling same, not been proved - Further, as per RC Book and Insurance Policy only three persons including Driver can travel in vehicle - But, admittedly 5 persons travelled in vehicle-".

8.Another judgment of this Court reported in **2020 (2) TN MAC 777** in the case of **New India Assurance Co.Ltd., Vs Mohamudha Fajila**, is cited, wherein it is held that,

"*Whether deceased travelled in vehicle as Owner of goods or Gratuitous passenger - Liability of Insurer - Deceased purportedly proceeding to Pudukottai to purchase Tannery items and while proceeding Van met with accident - Goods not purchased for which vehicle hired by deceased - Expression "including Owner of goods or his Authorized Representative"in Section to be given plaint and restricted meaning - Therefore, to* *hold Insurer liable deceased should have carried goods in vehicle - Deceased, neither purchased goods nor loaded same in vehicle - Therefore, it can be said that deceased travelled in Van as a Gratuitous passenger - Tribunal erred in holding Insurer / Appellant liable - Accident result of Contributory Negligence of two vehicles viz. Van and Bus - Tribunal apportioned liability at 50: 50 between Insurer of Van and Transport Corporation - "*

*9.*On the side of the appellant it is stated that in both the cases cited above, this Court has discussed various citations of the Hon'ble Supreme Court and has held that the insurance company is not liable to pay compensation to gratuitous passengers.

10.On the side of the first respondent herein, it is stated that the first respondent sustained injury in the accident. The first respondent/claimant is entitled to claim compensation. The appellant is bound to pay compensation to the first respondent herein /claim petitioner and the appellant can claim the same from the second respondent. As per the amendment in the year 1994, the owner of the goods and this authorized representatives are entitled to compensation. A judgment of this Court reported in **2013 (1) TN MAC 870** in the case of **K.Murugana Vs M.Panchvarnam**, is cited, where in it is held as follows:

> *"By reason of the 1994 Amendment what was added is "including owner of the goods or his authorized representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorized representative carried in the vehicle besides the third parties, the intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147, would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in sub-clause (i) of clause(b) of sub-section(1) of Section 147, would have included the owner of goods or his authorized representative besides the passengers, who are gratuitous or otherwise".*
>
> *Therefore, the Insurance Company is liable to pay the compensation. "*

11.There was no goods available in the goods vehicle at the time of accident. The vehicle is a load auto. Admittedly, the claimant and his wife travelled along with the driver. Only driver is entitled to travel in the goods auto. The judgments cited on the side of the first respondent are not applicable to the facts of this case. The first respondent was not travelling as a owner of the goods or as the representative of the owner of the goods. The claimant travelled in the auto for purchasing onion saplings. Hence, the claimant cannot be treated as the owner of the goods. The claimant was travelling only as a gratuitous passenger and hence the insurance company cannot be fastened with the liability to pay compensation. The appellant herein/ insurance company, is exonerated from the liability.

12.Accordingly, this Civil Miscellaneous Appeal is allowed.

(i)The second respondent /owner of the vehicle is directed to deposit the amount of Rs.1,89,657/- (Rupees One Lakh Eighty Nine Thousand Six Hundred and Fifty Seven only) to the first respondent herein/claim petitioner which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent - owner of the vehicle, is directed to deposit the entire compensation of Rs.1,89,657/-(if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs to the credit of M.C.O.P.No.241 of 2016 on the file of the Additional Motor Accident Claims Tribunal Judge and Additional Subordinate Judge of Tenkasi, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the second respondent herein, the appellant / claimant is permitted to withdraw the award amount.

12.09.2022

Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal Judge and
Additional Subordinate Judge, Tenkasi.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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