IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2023

PRONOUNCED ON : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No. 2125 of 2011
and
M.P.No.1 of 2011

The Divisional Office
The New India Assurance Co. Ltd.,
Tiruvannamalai ... Appellant / 3rd Respondent

Vs.

1. Chinnaraji ... 1st Respondent / Petitioner
2. K. Bhoopathy ... 2nd Respondent / 1st Respondent
3. V. Subramani ... 3rd Respondent/ 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 23.02.2011 made in M.C.O.P. No. 213 of 2008, on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur.

For Appellant	:	Mr. C. Ramesh Babu
For R1	:	Name printed in causelist
For RR 2 and 3	:	Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Award and Decree dated 23.02.2011 made in M.C.O.P. No. 213 of 2008, on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, wherein, the Tribunal has directed the Insurance Company to indemnify the owner of the offending vehicle.

2. For the sake of convenience, the parties are referred herein according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 13.05.2006 at about 1:00pm, the claimant along with other persons after loading the sugarcane in the trailer bearing Registration No. TN-27-U-1699 of the tractor bearing Registration No. TN-45-M-4440 travelled in the trailer along with the sugarcane load on the Tirupattur to Kakkangarai road. While the tractor reached near Kakkangarai lake, due to high speed driving by the driver of the tractor, the tractor and its trailer were capsized and the accident has caused severe injuries to the claimant, who was travelled in the trailer. A criminal case was also registered against the driver of the tractor in Crime No.342, under Sections 279, 337, 335 and 304-A of IPC. For the injuries sustained by him, he has filed a claim petition seeking compensation for a sum of Rs.5,00,000/-.

4. The first respondent is the driver of the tractor and the second respondent is the owner of the tractor, who were not appeared before the Tribunal and contested the case. The third respondent-Insurance Company has filed counter and stating that the driver of the tractor, not having valid driving licence and also stated that the tractor alone was insured with the third respondent and the trailer was not insured with them. It is also disputed that the claimant and others travelled in the trailer of the tractor for loading and unloading purpose. Injured are unauthorised passengers and the third respondent is not liable to pay compensation as awarded by the Tribunal under various heads and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, PW1 was examined and Exs.P1 to P8 were marked and on the side of the respondent, RW1 and RW2 were examined and Exs.R1 and R2 were marked. Based on the evidences placed on record, the Tribunal has considered and held that the accident was occurred due to the negligent driving by the driver of the tractor and the driver of the tractor was not having a valid driving licence at the time of accident. The Tribunal also quantified and awarded compensation for a sum of Rs.1,17,288/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the direction to indemnify the owner of the vehicle, the Insurance Company has come forward with this appeal.

7. It is submitted by the learned counsel for the appellant-Insurance Company that the claimant has travelled in the goods vehicle as an unauthorised passenger and he is not authorised to travel in the trailer, hence, they are not liable to pay the compensation. He has also stated that the trailer was not having valid insurance policy and no evidence was produced for the same and hence they are not liable to pay the compensation.

8. On the side of the claimant, it is submitted that, Insurance company disputed the claim before the Tribunal on the ground of non-possession of driving licence by the driver of the tractor and no other issue was raised before the Tribunal about the claimant along with others, have travelled in the goods vehicle as a workmen or unauthorised passenger.

9. The evidence placed before the Tribunal shows that, PW1 deposed that he travelled in the vehicle bearing Registration No. TN-27-U-1668 which was attached with the tractor bearing Registration No. TN-45-M-4440. Even though, it is stated by the Insurance Company that there is no policy coverage for the trailer, they have adduced evidence only for non-possession of driving licence on examining the officials of the RTO Office, marked Ex.R1 before the Tribunal, which held that the driver of the tractor was not having valid driving licence. Subsequently, in the cross-examination, it is accepted by the counsel on record for the Insurance Company that based on the Motor Vehicle Inspector Report-Ex.P3, it is found that the tractor and trailer were insured with third respondent.

10. Now, the question arises for the consideration is that whether the claimant travelled in the trailer is entitled for compensation or not. Even though, the claimant has contended that, no such issue was raised before the Tribunal, the counter of insurer shows that, they raised a point that the claimant is an unauthorised passenger and he is not entitled for compensation.

11. The claimant in his evidence stated that he travelled in the trailer along with sugarcane load and was sitting over the sugarcane load, it shows that there is a clear violation of policy condition. The loadmen of the goods are entitled to travel only inside the cabin and not over the load or in the goods cabin. Since in this case, it is admitted that the claimant was sitting over the sugarcane load and this violation is a serious violation of policy as well as statutory violation.

12. The learned counsel also relied on the Judgment of this Court in ***C.M.A.No.2649 of 2017, the United India Insurance Company Limited vs. Saraswathi and two others,*** wherein, this Court has considered the issue, whether the persons who travelled in the Trailer as loadmen are entitled to claim compensation or not. This Court, after considering the Judgments of the Hon'ble Apex Court in ***New India Assurance Co., Ltd., vs. Asha Rani and Ors., [2001 (6) SCC 724]; National Insurance Co., Ltd., vs. Baljit Kaur [2004 (2) SCC 1 : AIR 2004 SC 1340]*** and the Judgment of this Court in ***Bharti Axa General Insurance Company Limited vs. Aandi and Others [2018 (2) TN MAC 731 (DB)]*** has held that, directing the Insurance Company to indemnify the owner of the vehicle for payment of compensation to the gratuitous passengers who travelled in the Tractor/ Trailer is not valid and same is liable to be set aside.

13. The contention of the claimant is that, he has travelled in the Trailer as a loadmen to unload the sugarcane and since the Trailer is also insured with the Insurance Company herein, the Tribunal has rightly awarded compensation and since the first respondent has no valid driving licence at the time of accident, the Tribunal has adopted the principle of "Pay and Recover" hence, prays to confirm the award.

14. In the case in hand, it is an admitted case of the claimant that he travelled in the Trailer, while carrying sugarcanes. He claim compensation terming himself as loadmen travelled in goods vehicle and according to him, the Insurance Company has Statutory Obligation to pay compensation if the loadmen travelled in goods vehicle suffered bodily injury as per Section 147 (1) of the Motor Vehicles Act.

15. Recently, the Full Bench of Karnataka High Court in ***2021 SCC***

Online Karnataka 12137 [Gandhilingappa @ Gandhilinga and Another vs. K.Guleppa and Others] in paragraph No.21 by following the judgment of the Hon'ble Apex Court passed in ***2004 (8) SCC 697 National Insurance Company Ltd., vs Chinnama and others*** held that the person travelled in the Tractor Trailer would not fall within the category of persons travelled along with the goods and they could not be termed as third parties and observed in paragraph no.21 as follows:

> *"21. In fact, the issue whether a tractor is a goods carriage arose for consideration before a Bench of three Hon'ble Judges of the Apex Court in the case of V.Chinnamma, (supra). In paragraph 15 and 16, the Apex Court has dealt with the issue. In categorical terms, it has been held that a tractor by itself is not a goods carriage. However, in paragraph 16, the Apex Court observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the M.V.Act. The observations made by the Apex Court in paragraphs 15 and 16 are relevant which read thus:*
>
> *"15. <u>Furthermore, a tractor is not even a goods carriage.</u> The expression "goods carriage' has been defined in Section 2(14) to mean*
> *"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"*
> *whereas, "tractor" has been defined in Section 2(44) to mean.*
> *"a motor vehicle which is not itself constructed*

to carry and load (other than equipment used for the purpose of propulsion); but excludes a roadroller". "Trailer" has been defined in Section 2(46) to mean

"any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle".

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani and other decisions following the same, as the accident had taken place on 24.11.1991 i.e., much prior to coming into force of the 1994 amendment."

16. This Court in ***C.M.A.No.2649 of 2017, the United India***

Insurance Company Limited vs. Saraswathi and two others, has considered the case of the claim made for the death of person travelled in the Trailer, and after considering the Judgments of the Hon'ble Apex Court in ***New India Assurance Co. Ltd., v. Asha Rani and Ors.,*** reported in ***2001 (6) SCC 724; National Insurance Co. Ltd., v. Baljit Kaur*** reported in ***2004 (2) SCC 1*** and ***Bharti Axa General Insurance Co. vs Smt. Poonam And Anr.,*** this Court has held in Paragraph No.26, as follows:

> *"26. The issue is thus settled in case of compensation to be paid for sufferings of gratuitous passenger and it would be extremely inappropriate, if this issue were to again meander around and be held otherwise than as laid down. The law laid down is that the Tribunal was not right in directing the insurance company to pay the compensation and then recover the same from the owner of the offending vehicle."*

17. The Judgment of the Full Bench of Karnataka High Court cited above, is squarely applied to this case, since the claimant had travelled in the goods vehicle by sitting in the Trailer which is not having any permissible seating capacity enabling the loadmen to travel in the Trailer. He is not entitled to travel in the Trailer on the ground that he is a loadmen. As per the policy condition, transporting of any person in the Trailer is not permissible. Hence, the claimant shall be termed only as a gratuitous passenger and the

Insurance Company is not liable to indemnify the owner of the vehicle as held by the Hon'ble Apex Court in ***Asha Rani and Baljit Kaur*** cases cited above.

18. Accordingly, this Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.No.213 of 2008 is hereby modified that the claimant os entitled to claim compensation only against the first and second respondents, who are the driver and owner of the Tractor and the Insurance Company is not liable to pay any compensation to the claimant. In other aspects the award of the Tribunal shall stand confirmed. The Insurance Company is permitted to withdraw the compensation amount if any, already deposited in M.C.O.P.No.213 of 2008. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

11.09.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

K. RAJASEKAR, J.,

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To:

1. The Sub Judge,
 Motor Accident Claims Tribunal,
 Tirupattur.

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

C.M.A. No. 2125 of 2011

11.09.2023