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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

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THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3606 of 2011

1.C.Jagadesan
2.Minor J.Vetrivel
3.Minor J.Ambiga
4.Minor Elavarasi
Appellants

...

Vs

1.D.Kumar
2. The Branch manager,
National Insurance Company Ltd.,
Branch Office,
Dharmapur

... Respondents

Prayer: This Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 19.10.2009 made in MCOP No.313 of 2005 on the file of the Motor Vehicle Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellants : M/s.M.Sriram



For Respondents : No Appearance

JUDGMENT

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This Civil Miscellaneous Appeal is filed by the claimants challenging the award passed by the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri in MCOP.NO.313 of 2005 dated 19.10.2009 wherein the Tribunal absolved the insurance company from indemnifying the owner of vehicle, from paying compensation.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3.The case of the claimants are as follows:

On 17.03.2004, the first petitioner's wife and some others were where proceeding in the Mitshubishi canter lorry bearing Regn.No.TN 41 B 8521 belongs to the first respondent, insured with the second respondent from their village to Rayakottai Market with their Tomato vegetable baskets. The driver of the lorry has driven the vehicle in a rash and negligent manner and at about 12.30 hours, and vehicle was capsized which resulted in causing the injuries to the first petitioner's wife and others. Immediately, she was taken to Government Head Quarters Hospital, Dharmapuri and died next



day. In this regard, a criminal case was registered against the first respondent on the file of Royakotta Police Station in Cr.No.74 of 2004, under Section 279, 337 and 304(A) of IPC. On the death of the deceased, the claimants have come forward as Dependents claiming compensation for a sum of Rs.5,00,000/-.

4. The first respondent was remained exparte and has not contested the claim petition.

5. The second respondent has filed counter and contested that nearly 20 persons were travelled in the goods vehicle as unauthorized passengers, hence insurance company need not indemnify the first respondent who has violated the statutory as well as policy conditions.

6. Before the Tribunal, on the side of claimants, P.W.1 to P.W.2 were examined and Exs.P1 to P4 were marked in support of their claim and on the side of the respondents, R.W.1 was examined and Ex.R1 was marked in support of their contention.



7. Based on the evidence placed on record, the Tribunal in Point No.1 has held that driver of the bus is responsible for the accident and in Point No.2, the Tribunal has considered the point regarding the violation of the policy conditions. Based on the admitted evidence of P.W.1 and R.W.1 and also Ex.P1, the Tribunal has held that the deceased and others were travelled in the first respondent vehicle as gratuitous passengers. In Point No.3, the Tribunal has held that claimant were entitled for a compensation of Rs.4,42,000/-, however the same shall be paid only by the first respondent and the second respondent is not liable to pay the compensation. Aggrieved over the absolving the insurance company from indemnifying the first respondent, this Civil Miscellaneous Appeal has been filed.

8. Learned counsel for the claimants would submit that the deceased and injured in this case have travelled in the goods vehicle as the owner of the goods and the Tribunal without considering the above fact, proceeded as if the claimants have travelled as unauthorized passengers. There is ample evidence placed on record to show that the claimants has travelled as owner of the goods i.e., Tomato to the market. Hence prays to set aside the above finding and to direct the second respondent to pay the compensation.



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9. Respondents have not appeared before the Court in spite of the notice served on them.

10. I have considered the submissions made by the learned counsel for the claimants and perused the records.

11. It is admitted facts of the claimants that the deceased Muniamma was travelled in the goods vehicle. However it is their case that she travelled along with the goods in capacity as the owner of the goods. The burden lies on the claimants herein to show that the deceased Muniamma was travelled in the goods vehicle as owner of the goods. On a perusal of the FIR marked as Ex.P1 shows that nearly 15 persons were travelled in the goods vehicle by carrying Tomato baskets which was kept in the goods area. P.W.2 who travelled in the vehicle stated that on 17.03.2004 he along with other persons from his village were carrying Tomato to Royakotta market and in the said vehicle around 15 persons have travelled in the goods vehicle and they have not seated in the cabin. The evidence of P.W.1 and P.W2 shows that the deceased has travelled in goods vehicle by sitting on the Tomato



baskets in the goods loading area. It is settled law that a person is entitled to claim compensation if there is coverage for the same.

12. The insurance company has stated that nearly 15 persons have travelled in the vehicle and the permitted carrying capacity is only three in numbers. This itself sufficient to show that there is violation of policy condition. Similarly, the deceased has not travelled in the cabin of the vehicle and she travelled in the goods loading area. This Court is of the view that carrying 15 persons is sufficient to show that there is violation of policy condition everythough carrying capacity is only 3 numbers and persons who travelled in the goods area not in cabin could not be termed only as gratuitous passengers. Madurai Bench of this Court in the case of ***The Branch Manger, Sri Ram General Insurance Company Ltd. Vs. Govindan and Ors***” in C.M.A. No.382 of 2018 has held as follows:

“9. Wherein it is held that for death or injury of a passenger/ gratuitous passenger in a goods vehicle, the insurer cannot be held liable and the insurer cannot even be directed to pay and recover the award amount where the policy is required to



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cover only certain classes of persons and there is no mandatory requirement for the insurer to cover persons travelling as passengers in goods vehicle unless the occupant is the authorised representative or the owner of the goods accompanying the goods. Wherein, in this case, there is clear violation of policy condition that five persons were allowed to travel in the goods area of the offending vehicle and there is also no evidence to show that the claimant travelled in the offending goods vehicle as owner of his goods. Hence, this Court is of the view that the claimant is entitled to get the compensation awarded by the Tribunal only from the first respondent, who is the owner of the offending vehicle and the second respondent - insurance company, who is appellant herein is to be exonerated from the liability to indemnify the owner of the offending vehicle, accordingly, this appeal is allowed.”

and this Court after considering the Judgements 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 reported in 2018 (2)

TN MAC 731 (DB) has to set aside the award of the Tribunal, directing the Insurance company to indemnify the owner of the vehicle for payment of compensation to the gratuitous passengers who travelled in that vehicle.

13. This Court finds no perversity in the finding the of the Tribunal that there is violation of both policy as well as statutory conditions. This Court is not inclined to interfere with the same. In view of the discussions made above, there is no merits in the appeal filed by the claimants and the same is liable to be dismissed.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Index : Yes/No
Internet : Yes/No
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19.09.2023



To
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1. The Motor Vehicle Claims Tribunal,
Principal District Judge, Krishnagiri.
2. The Section Officer,
VR Section, Madras High Court.



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10

K.RAJASEKAR, J.

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