IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

CMA. No. 2796 of 2012

M/s. Bajaj Allianz General Insurance Co.Ltd.,
No.11 (Office No.6-A)
Peoples Park, III Floor,
Government Arts College Road,
Coimbatore - 641018 ... Appellant

Vs.

1. Natarajan
2. Subramani
3. Ravi
4. Nagajothi
5. Samsudeen ..Respondents

Prayer : Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 05.01.2012 in M.C.O.P.Nos.92 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram District, Villupuram.

For Appellant : Mrs. R.Sreevidhya

For Respondents : R1 - Died
R5 - No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the common judgment and decree dated 05.01.2012 in M.C.O.P.Nos. 92 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram District, Villupuram.

2. The appellant herein is the 2nd respondent before the Tribunal. The respondents have filed separate claim petitions for compensation for the death caused in the road accident that took place on 17.05.2006**.**

3. Brief facts of the case is that on 17.05.2006 at 1.30 p.m., when the deceased Pichai along with other persons were travelling in the 5th respondent Minidor Vehicle bearing Reg.No.TN-32-C-4815 from Santhanoor to Kasapakarani, when the said vehicle proceeding near Sathanoor Erikarai, the driver of the vehicle drove the same in a very rash and negligent manner and capsized the vehicle. Due to which, the said Pichai died and some other persons sustained grievous injuries. The accident had occurred only due to the rash and negligent driving on the part of the driver of the 5th respondent vehicle.

Hence, they filed separate claim petitions before the Tribunal. The Tribunal after considering the pleadings, oral and documentary evidence, has concluded that the accident had occurred only due to the rash and negligent driving on the part of the driver of the van and awarded compensation of Rs.1,52,000/-. The Tribunal directed the Insurance Company to pay the compensation to the claimants at the first instance and directed recover the same from the owner of the vehicle. Challenging the said liability fastened on the insurance company, they come out with the present appeal.

4. The appellant/Insurance Company, filed counter statement before the Tribunal and denied the mode of accident. The vehicle involved in the accident insured with the appellant for carrying goods and the policy was issued for the said purpose, therefore, the appellant/insurance company is not liable to pay compensation.

5.Before the Tribunal, the 1st claimant/1st respondent herein examined as P.W.1 one Kuppan was examined as PW2/eyewitness and marked documents ExP1 to P6. The appellant/insurance company examined its official witnesses as RW1 & RW2 and marked documents Ex.R1 to R3.

6. The Tribunal after considering the pleadings, oral and documentary evidence, fixed liability on the part of driver of the 5th respondent vehicle and directed the Insurance Company to pay the compensation awarded by the Tribunal at the first instance and thereafter recover the same from the owner of the vehicle. Challenging the liability fastened, the Insurance Company has come out with these appeals.

7. The main ground raised in the appeal is that the Tribunal erred in holding the appellant/insurance company is liable in a case where the driver had no valid license, which is a serious violation of Motor vehicle Act and the policy of insurance. The victims were travelled as un-authorised passengers in a goods vehicle, therefore they are not entitled for coverage as per policy conditions/Ex.R3. The further contention raised by the appellant/insurance company is against the pay and recovery ordered by the Tribunal, which is contrary to law laid down by the Hon'ble Supreme Court and this Court. Hence, prayed to set aside the award passed by the Tribunal.

8. It is an admitted fact that the deceased had travelled as unauthorised passengers in the vehicle. At the time of the accident totally 14 persons were travelled as passengers in the said vehicle belongs to the 6th respondent. It is clear from Ex.R3/Copy of the policy that the said vehicle was insured with the respondent for carrying goods and the policy was also specifically issued for the said purpose. Therefore, carrying of passengers for hire or reward is a clear violation of policy conditions.

9. It is seen from the award that the Tribunal by relying upon the judgment of this Court reported in ***2010 (1) TNMAC 571 in the case of New India Assurance Company Ltd., Virudhunagar Vs.1.Muniyandi & 4 Others,*** has directed the insurance company to pay the compensation at the first instance and recover the same from the owner of the vehicle.

10. At this juncture, it is useful to rely upon the decision of the Division Bench of this Court in the case of ***BHARATI AXA GENERAL INSURANCE CO. LTD. VS. AANDI AND TWO OTHERS REPORTED IN 2018 (2) TN MAC 731 (DB)*** wherein the Hon'ble Division Bench of this Court has

considered all above aspects in detail and held that held as under:

"25. A reading of the above provision makes it clear that an insurance policy which is a mandatory statutory requirement is required to cover only certain classes of persons and not every person who chooses to travel in any type of vehicle. Therefore, there is no mandatory requirement for the Insurance company to cover persons who are travelling as passengers in a non passenger vehicle/ goods vehicle.

26. Section 149 imposes an obligation on the part of the insurers to satisfy the judgments and awards made against the persons insured in respect of third party risks. Section 149(2) requires the Court or the Tribunal to notify the Insurance Company regarding the claim and also hear the Insurance Company and prescribes the defences that are available to the insurer in such third party claims. One of the defences that is available to the insurer in such third party claims as set out under Section 149(2)(a)(i)(c) is that the insured vehicle being used for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle. Therefore, it is clear that a Insurance Company which faces the claim petition can raise a statutory defence to the effect that the vehicle in question was used for a purpose other than the purpose for which the permit had been *issued, in order to avoid the liability. Both these provisions have to be necessarily read together."*

The aforesaid decision squarely applies to the facts of the instant case.

11. Admittedly, in the present case on hand, the offending insured vehicle is insured with this appellant for carrying goods and the policy/Ex.R3 also reveals the same. Therefore, it is clear that the policy conditions of the insured vehicle were violated by the owner of the vehicle and all the 14 persons including the deceased Uthirambal had travelled as an unauthorised passengers in the said vehicle. Since the policy conditions of the offending insured vehicle were violated, Insurance Company is not liable to pay compensation to the claimant in view of the decision of the Hon'ble Division Bench of this Court cited supra.

12. In view of the above, the appellant/Insurance company is absolved from liability to pay compensation to the claimant. The appellant/ Insurance Company is permitted to withdraw the amount already deposited before the Tribunal. The award passed by the Tribunal against the appellant/Insurance company is set aside. Therefore, the award is only against the owner of the

vehicle, viz., 6th respondent herein. It is for the respondents 1 to 5/claimants to recover the said amount from the owner of the vehicle/6th respondent herein in the manner known to law.

13. In fine, the appeal is allowed. No costs.

07.06.2023

Index: Yes/No
Internet : yes
gv

To

1. The Chief Judicial Magistrate,
   (Motor Vehicles Accident Claims Tribunal)
   Villupuram.

2. The Section Officer,
   VR Section,
   High Court, Madras.

A.A.NAKKIRAN. J.,

gv

CMA. No.2796 of 2012

07.06.2023