THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.496 of 2021
and
C.M.P.No.3136 of 2021

United India Insurance Co. Ltd.,
Motor Third Party HUB,
Silingi Buildings, 4th Floor,
No.134, Greams Road,
Chennai – 600 006. ...Appellant

Vs.

1.Lakshmamma
2.Nagaiah
3.P.Krishnamoorthy ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 14.11.2019 made in MCOP.No.2243 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Varadhakamaraj for R1 & R2
R3 – Served – No Appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company, which had suffered an award for payment of a sum of Rs.20,00,000/- as compensation for the death of one Balasubramanyam @ Balakrishna, son of Nagaiah in a motor accident that took place on 20.04.2015 at about 6.30 p.m., is the appellant.

2.According to the claimants, who are the parents of the deceased, while the deceased, who was working as a Coolie with the owner of the Tractor bearing Registration No.AP-03-W-4630 and the Trailor attached to it bearing Registration No.AP-03-W-4631 was travelling in the Tractor along with the goods namely, sand at about 6.30 p.m., on 20.04.2015, the driver of the Tractor drove the vehicle in a rash and negligent manner, resulting in the deceased falling of the vehicle amd the hook of the Tractor penetrated into the stomach of the deceased and he died at the SVRRGG Hospital at Tirupathi on 21.04.2015. Terming the negligence on the driver of the Tractor as the cause of the accident and contending that the deceased was earning about Rs.500/- per day, the claimants sought for a compensation of Rs.10,00,000/-.

3.The claim was resisted by the Insurance Company contending that it cannot be made liable for the claim, in view of the fact that the deceased has travelled in a Tractor, which is a special type of vehicle, in which, there is no room for any person to travel, except the driver. The learned counsel for the Insurance Company would also contend that the vehicle could be used only for agricultural purpose and admittedly, the vehicle was used for transporting sand, which is in violation of the policy conditions. It is the further contention of the Insurance Company that the deceased, being the employee of the owner of the Tractor, the Tribunal had no jurisdiction to entertain the petition.

4.At trial, before the Tribunal, the 1st claimant was examined as P.W.1 and one Nagaraju, an eye-witness was examined as P.W.2. Exs.P1 to P10 were marked. On the side of the respondent / Insurance Company one Senthilvel, Officer of the Insurance Company was examined as R.W.1 and Exs.R1 to R5 were marked. The Tribunal, on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the Tractor. The Tribunal rejected the defence of the Insurance Company based on the violation of policy condition as well as on the question of liability and arrived at the compensation of Rs.20,00,000/- and directed the Insurance Company to pay the same. The Tribunal directed the Insurance Company to pay the compensation at the first instance and reserved their right to pay and recover at a later point of time. Aggrieved, the Insurance Company is on appeal.

5.We have heard Mr.S.Arunkumar, learned counsel for the appellant / Insurance Company and Mr.K.Varadhakamaraj, learned counsel for the claimants/ respondents.

6.Mr.S.Arunkumar, learned counsel for the Insurance Company would vehemently contend that the deceased having travelled in a Tractor, being an unauthorized passenger, the Tribunal ought not to have directed pay and recover. Drawing our attention to the RC Book of the Tractor, which shows that the permitted capacity is only one and that too, to the driver. The learned counsel would contend that Rule 28 of the Central Motor Vehicle Rules prohibits the driver from carrying or allowing any person to be carried on a Tractor. He would also invite our attention to Section 147 of the Motor Vehicles Act, which according to him does not require the Insurance Company to cover unauthorized persons travelling in a Tractor.

7.The learned counsel for the Insurance Company draw our attention to the judgment of the Hon'ble Supreme Court in **United India Insurance Company Ltd. Vs. K.K.Suresh and Another** reported in **2009 (1) LW 27** to contend that a person, who travels in a goods vehicle unauthorizedly is not covered by the policy and therefore, the Insurance Company cannot be made liable. Mr.S.Arunkumar would also point out that the Hon'ble Supreme Court has held that if there is only one seat in the vehicle, even owner of the goods is travelled in such vehicle, the insurance is not covered.

8.He would also draw our attention to the judgment of a Division Bench of this Court in **Bharati AXA General Insurance Co. Ltd., Vs. Aandi and Others** reported in **2018 (2) TN MAC 731** to which one of us

(Hon'ble Mr.Justice R.Subramanian) was a party wherein, it was held that there is no statutory requirement to cover a person, who travels as passenger in any type of vehicle. After analysing the scope of Sectios 147 & 149 of the Motor Vehicles Act, it was pointed out that the Insurance Company is liable to cover the risk in respect of death or bodily injury or damage to any property of a Third party, owner of the goods or his Authorized Representative carried in a goods vehicle or against the death or bodily injury to the passenger of a Public service vehicle. It was concluded that the Insurer is not required to cover a particular type of a person, who is an unauthorized passenger in a vehicle, which does not contain any provision for passengers and therefore, a direction to pay and recover to be issued in respect of such persons.

9.The judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Swaran Singh and Others** reported in **2004 (3) SCC 297** was also considered by the Division Bench and it was held that, the law laid down the principle of pay and recover would apply only where there is a subsisting contract of insurance convering the risk and the

Insurance Company avoids the liability of certain violations of policy conditions in cases where, the Insurance Company is not bound to recover the risk, despite there being a valid policy, there cannot be a direction for pay and recover.

10.Mr.S.Arunkumar would also draw our attention to the judgment of the Hon'ble Supreme Court in **Shivraj Vs. Rajendra and Another** reported in **2018 (2) TN MAC 273** wherein, the Hon'ble Supreme Court had confirmed the conclusions of the High Court to the effect that the Insurance Company was not liable for such loss or injuries suffered by a person, who travels in a Tractor. However, the Hon'ble Supreme Court taking into account the peculiar circumstances directed the Insurance Company to pay compensation with liberty to recover.

11.We must hasten to add that the attention of two Judge Bench, which decided **Shivaraj Vs. Rajendra and Another** was not drawn to the dictum of the larger Benches in **New India Assurance Co. Ltd., Vs. Asha Rani and Others** reported in **2004 (2) TN MAC 387** and **National**

Insurance Co. Ltd., Vs. Baljit Kaur and others reported in **2004 (1) CTC 210** wherein, Hon'ble Supreme Court had after detailed discussions held that the pay and recover would arise only there is a valid contract of insurance and there is a statutory requirement for coverage of the risk.

12.Mr.S.Arunkumar, learned counsel would also invite our attention to the judgment of the Full Bench of the Karnataka High Court in **Gandhilingappa @ Gandhilinga and Another Vs. K.Guleppa and Others** reported in **(2021) 2 TN MAC 116** wherein, the Full Bench has framed the following points for determination:-

> *"i) Whether a person travelling on a mud-guard of a tractor can be construed as an authorized passenger or an unauthorized passenger and liability of such person is covered or not?*
>
> *ii) Whether the persons who are working either on the ploughing or crushing machines attached to the tractor can be construed as employees so as to cover their risk statutorily under Section 147 of MV Act though there is only one seating capacity in the tractor apart from the driver ?*
>
> *iii) Whether the crushing machine or ploughing*

machine or any other instrument attached to the tractor can be considered to ba an attachment to the tractor so as to cover the risk of the insured in respect of employees and the policy taken in respect of the tractor alone ?"

13.The Full Bench of the Karnataka High Court answered the Question No.1 in terms of paragraph 23 of the said judgment, which reads as follows:-

"23. The Apex Court has reiterated that a tractor could lawfully accommodate only one person, namely, the driver. The Apex Court categorically held that the appellant in the said case had travelled in the tractor as a passenger even though the tractor could accommodate only one person namely the driver. It was categorically held that the insurer was not liable to indemnify the owner of the tractor for the liability of a passenger travelling on the tractor. Hence, in view of the dictum of the Apex Court referred above, the liability of a person sitting on the mud-guard of a tractor is not required to be covered by statutory insurance policy, as contemplated by sub-section (1) of Section 147 of the M.V.Act."

14.Contending contra, Mr.K.Varadhakamaraj, learned counsel for the respondents / claimants would rely upon the judgment of the Hon'ble Supreme Court in **Shivawwa and another Vs. Branch Manager, National India Insurance Co. Ltd., and another** reported in **2018 (1) TN MAC 435** wherein, the Hon'ble Supreme Court had held that a person travelling along with his goods in the Tractor, though may not be strictly covered by the policy, the Insurer could still be directed to pay and recover in terms of the judgment of the **National Insurance Company Ltd. Vs. Swaran Singh and Others** reported in **2004 (3) SCC 297.**

15.We do not find any referrence to any of the other judgment of the Hon'ble Supreme Court, which deals with a liability of the Insurance Company or the requirement of the statute to cover the risk in the said judgment. We find that the judgment of the Hon'ble Supreme Court in **Shivawwa ad Another Vs. Branch Manager, National India Insurance Co. Ltd.,** runs counter to pronouncement of the judgments in **Shivaraj Vs. Rajendra and Another** reported in **2018 (2) TN MAC 273, National Insurance Co. Ltd., Vs. Chinnamma and Others** reported in **(2004) 8**

SCC 697, New India Assurance Co. Ltd., Vs. Darshna Devi and Others reported in **2008 ACJ 1318** and **United India Insurance Co. Ltd., Vs. K.K.Suresh & Another** reported in **2009 (1) LW 27.**

16.We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle. Rule 28 of the Central Motor Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mud-guard of the Tractor. When there is a statutory violation that persons, who travels in the mud-guard is unauthorized passenger, we cannot burden the Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailor shows that it is an agriculture vehicle. The facts revealed that it was used for nonagricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability.

17.The irresistable conclusion in the light of the above discussion is that the Tribunal erred in directing the Insurance Company to pay a compensation with liberty to recover the same from the Insurer. This Civil Miscellaneous Appeal is therefore, allowed with a direction that the decision of the Tribunal to pay and recover alone will stand deleted. Since the owner has not questioned the owner of quantum of compensation, we do not interfere with the same. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) **(R.K.M.,J.)**
03.08.2023

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order
Nuetral Citation : Yes/No

To:-

The Motor Accident Claims Tribunal,
Special Sub-Court No.2,
Chennai.

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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