IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 1835 of 2018
CMP.No.14222 of 2018

M/s.Royal Sundaram Alliance
Insurance Company Limited
No.46, Whites Road,
Chennai-600 014. .. Appellant

Versus

1.P.Valli
2.Raja
3.P.Sumathi
4.P.Rajiv Gandhi
5.L.Tamilvendhan .. Respondents

Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 07.11.2017 made in MCOP No.210 of 2015 on the file of the Motor Vehicles Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For appellant	:	Mrs.Harini for Mr.E.Rajadurai
For R1 to R4	:	Mr. T.L. Thirumalaisamy
For R5	:	No Appearance

JUDGMENT

The appellant/Insurance Company has come forward with this appeal questioning the validity and correctness of the award dated 07.11.2017 made in MCOP No.210 of 2015 on the file of the Motor Vehicles Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2. The Insurance Company is the 2nd respondent in MCOP No.210 of 2015. The 1st respondent therein was the owner of the vehicle, which involved in the accident.

3. The claimants have filed MCOP No.210 of 2015 by contending that on 08.02.2014 at about 12.45 hours, when the deceased Pitchapillai was travelling along with others in the vehicle bearing Registration No.TN-15-Z-2040 (TATA ACE) from Bhramakudam to Chemparampattu, the driver of the first respondent drove the said vehicle in a rash and negligent manner, due to which the vehicle capsized. In the impact, the deceased suffered grievous injuries and was taken to hospital. Even before he could reach the hospital, he breathed his last. According to the claimants, the deceased Pitchapillai was a daily wager and earning Rs.7,000/- per month. Due to the death of the deceased, the claimants who are his wife and children, have lost their

livelihood. Therefore, for the death of the deceased, the claimants have filed the claim petition, claiming a total sum of Rs.13 Lakhs as compensation.

4. The Insurance Company opposed the claim petition by filing a counter affidavit. According to the Insurance Company, at the time of accident, there were totally 23 persons, including the deceased, travelling in the offending vehicle as gratuitous passengers. According to the Insurance Company, as per the policy of insurance, only a paid driver, a cleaner or owner of goods are covered in the event of any accident. In the present case, the deceased was not a paid driver or cleaner but he was a gratuitous passenger at the time of accident. Further, the deceased travelled in the rear side portion of the goods carriage vehicle, which is meant for transporting the goods and not passengers. Thus, there is a clear violation of condition of policy and therefore, the owner of the vehicle alone is liable to pay compensation. Further, the vehicle did not involve in an accident with any other vehicle but due to the rash and negligent manner of the driver, it capsized resulting in the death of the deceased. Therefore, the Insurance Company vehemently opposed the claim petition filed by the claimants.

5. During the course of trial, on behalf of the claimants, the 4th claimant was examined as P.W.1 and one Vaitheeswaran was examined as

P.W.2 and Exs.P1 to P13 were marked. On behalf of the respondents, one Mariappan and Vengedesh were examined as R.Ws.1 and 2 and Exs.R1 to R4 have been marked. The tribunal on analysing the oral and documentary evidence concluded that the deceased was a gratuitous passenger and he ought not to have travelled in the goods carriage vehicle. However, the tribunal directed the Insurance Company to pay the compensation amount with liberty to them to recover it from the owner of the vehicle.

6. Assailing the said direction issued by the tribunal to pay the compensation amount and to recover it from the owner of the vehicle, the learned counsel appearing for the appellant would contend that the Tribunal having held that the deceased is a gratuitous passenger, ought not to have directed the Insurance Company to pay the compensation amount. The Tribunal has concluded that in a goods carriage vehicle, 23 persons have travelled unauthorisedly at the time of accident, including the deceased, while so, it ought to have directed the entire compensation amount to be paid only by the 1st respondent/owner of the vehicle. In this context, the learned counsel for the appellant relied on the decision of the Division Bench of this Court in ***Bharti AXA Genreral Insurance Co.Ltd., Vs. Aandi and Others*** reported in ***2019 ACJ 1975,*** in which, this Court after analysing the various judgments in

the field as well as the Full Bench decision of this Court in ***the United India Insurance Company Ltd., Vs. Nagammal,*** reported in ***2009 ACJ 865 Madras,*** has held that when the Insurance Company is not liable to pay the compensation in respect of a person who occupied a goods carriage vehicle, no direction could be issued to the Insurance Company to first pay the compensation amount and then recover it from the owner of the vehicle. In paragraph No.52 of the judgment of the Division Bench, it was held as follows:

> *"52.In fine, all the appeals will stand allowed only in respect of the question of liability of the insurance company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle, viz., respondent No.1 in all the original petitions and the award against the insurance company will stand set aside. However, in view of the fact that the claimants are not before us, we do not impose any costs. Consequently, the connected miscellaneous petitions are closed."*

7. Thus, the learned counsel for the appellant submitted that when the deceased was a gratuitous passenger, who travelled along with 23 other persons in a goods carriage vehicle, the insurance company cannot be mulcted with the liability to pay the compensation to the claimants. If at all the quantum of compensation awarded by the tribunal has to be paid only by the owner of the goods carriage vehicle.

8. On the above contention this Court heard the learned counsel for the respondents/claimants, who would only submit that the tribunal has awarded a meagre amount as compensation for the death of the deceased. It is further submitted that the Tribunal has only directed the appellant to pay the compensation amount, and then recover it from the owner of the vehicle. The claimants may not be in a position to directly recover the compensation amount from the owner of the vehicle and therefore the trial Court is wholly justify in issuing the direction to pay the compensation amount and then recover it from the owner of the vehicle. Therefore, the learned counsel for the respondents/claimants prayed for dismissal of this appeal.

9. Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the respondents/claimants and perused the materials available on record.

10. It is not in dispute that the deceased Pitchapillai, along with 23 other persons travelled as a gratuitous passenger in a goods carriage vehicle. Before the Tribunal, on behalf of the Insurance Company, the policy of insurance was marked as a document, which clearly shows that only the owner of the goods, a paid driver and a cleaner are entitled for compensation in the

event of any bodily injury to those persons. The deceased was admittedly not an owner of the goods carriage vehicle or a paid driver or a cleaner. He along with 23 others travelled in the goods carriage vehicle as a gratuitous passenger. This was not disputed by the claimants/respondents. Further the claimants/ respondents have not filed any separate appeal questioning the direction issued by the Tribunal to the Insurance Company to pay the compensation amount and to recover it from the owner of the vehicle.

11. The issue involved in the present appeal is no longer *res integra* as it was settled by the Division Bench of this Court in the decision in ***Bharti AXA Genreral Insurance Co.Ltd., Vs. Aandi and Others*** reported in ***2019 ACJ 1975,*** in which, this Court analysed several precedents and ultimately held that in all cases where there was violation of condition of policy, the Insurance Company need not be directed to pay the compensation amount and to recover it from the owner of the vehicle. The Division Bench has specifically held that when there is a violation of the statue, particularly Section 147 of the Motor Vehicles Act, the direction to the Insurance Company to pay the compensation first and to recover it from the owner of the vehicle would defeat the statutory object with which Section 147 of the Motor Vehicles Act was enacted. Ultimately, the Division Bench held that when there is a violation of

policy condition, a direction need not to be issued to the Insurance Company to pay the compensation and to recover it from the owner of the vehicle later. In the light of the above authoritative pronouncement of the Division Bench of this Court, this Court is of the view that the Tribunal is not right in directing the Insurance Company to pay the compensation amount first and to recover it from the owner of the vehicle later.

12. Admittedly, the owner of the vehicle in question remained ex-parte before the trial Court. For the purpose of recovering the compensation amount from the owner of the vehicle, this Court permit the claimants to file an execution petition in the same proceedings and to recover the compensation amount from the owner of the vehicle. If any such application is filed on behalf of the claimants to recover the compensation amount from the owner of the vehicle, the Tribunal shall dispose of such application as expeditiously as possible and not later than one year from the date of receipt of a copy of this judgment.

13. It is made clear that the quantum of compensation awarded by the Tribunal is confirmed and the compensation amount has to be paid only by the owner of the vehicle in view of the violation of the conditions of policy of insurance in this case.

14. In this context, this Court is fortified by the decision of the Division Bench of this Court in ***Mrs. Balamanohari and Others Vs. Sri.Venkateswara College of Engineering and Others*** reported in ***2018 (2) TNMAC 81 (DB),*** in which, in paragraph No.49 (iii) it has been held that such proceedings relating to recovery of the compensation amount from the owner of the vehicle shall be done in the very same execution proceedings.

15. Accordingly, the judgment and decree dated 07.11.2017 made in MCOP No.210 of 2015 on the file of the Motor Vehicles Accident Claims Tribunal, III Additional District Court, Kallakurichi, in so far as it relates to the direction, directing the appellant/Insurance Company to pay the compensation amount to the claimants and to recover it from the owner of the vehicle is set aside. The Civil Miscellaneous Appeal filed by the Insurance Company is allowed to that extent. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No **10.03.2023**
Internet : Yes/No
Speaking/Non-speaking order

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A.A.NAKKIRAN, J.

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To

1.The Judge,
III Additional District Court,
The Motor Vehicles Accident Claims Tribunal,
Kallakurichi.

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

C.M.A.No.1835 of 2018

10.03.2023