IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.457 and 458 of 2018
and
C.M.P.Nos.3908 and 3909 of 2018

C.M.A.No.457 of 2018

Bharti Axa General Insurance Co.Ltd.,
Metro Plaza, 2nd Floor,
Chennai. ... Appellant

vs.

1.S.Babu
2.B.Sathia
3.S.Saraswathi ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the common judgment and decree dated 14.07.2017 made in M.C.O.P.No.1887 of 2012 on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

C.M.A.No.458 of 2018

Bharti Axa General Insurance Co.Ltd.,
Metro Plaza, 2nd Floor,
Chennai. ... Appellant

vs.

1.Minor B.Jeeva
Rep.by his father S.Babu

2.S.Saraswathi ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the common judgment and decree dated 14.07.2017 made in M.C.O.P.No.1888 of 2012 on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant : Mr.K.Poomalai
in both C.M.As

For Respondents : No appearance

J U D G M E N T

These appeals are directed against the award dated 14.07.2017 passed in M.C.O.P.Nos.1887 of 2012 and 1888 of 2012 on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

2. For the purpose of convenience, the parties are described as per their ranking before the Tribunal.

3.The facts in nutshell are as follows :

(i) On 17.08.2011 at about 17.00 hours, when the deceased B.Anand and the first petitioner B.Jeeva in M.C.O.P.No.1888 of 2012 were travelling in a TATA ACE Van bearing Registration No.TN-05-AJ-3593 in Erukancheri Street, the driver driven the said vehicle in a rash and negligent manner and hit against a electric pole and the Van got capsized. Due to the said impact, B.Anand died and the first petitioner B.Jeeva sustained grievous injuries.

(ii) Seeking compensation against the owner of the Van and its insurer M/s.Bharti Axa General Insurance Co.Ltd., the legal heirs of the deceased filed M.C.O.P.No.1887 of 2012, claiming compensation of Rs.10,00,000/-, and the injured claimant filed M.C.O.P.No.1888 of 2012, claiming compensation of Rs.4,00,000/-.

4. The first respondent S.Saraswathi remained *ex-parte* before the Tribunal. The claim petitions were contested by the Insurance Company on various grounds and specifically stated that at the time of accident, the driver of the insured vehicle was a minor and did not possess any valid

driving licence. Further, the deceased and the injured claimant and other friends, who were minors were travelling as gratuitous passengers in the said vehicle, which are violation of the policy conditions. There is no valid permit for the said vehicle. That apart, they had disputed the other claims made in the claim petitions.

5. To substantiate the case on the side of the claimants, P.W.1 to P.W.4 were examined and on the side of the claimants in O.P.No.1887 of 2012 Ex.P1 to Ex.P7 were marked and on the side of the claimant in O.P.No.1888 of 2012 Ex.P8 to Ex.P17 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R6 were marked.

6. The Tribunal, after analysing the entire evidence, found that the accident had occurred due to rash and negligent driving of the driver of the goods vehicle. The Tribunal further held that the first respondent/owner of the goods vehicle has committed an offence by permitting the minor to drive the goods vehicle, which is against the policy conditions. The Tribunal

also held that the deceased and the injured claimant were also contributed to the accident and hence, fixed contributory negligence at 20% on the claimants and arrived at just compensation. Since there is a violation of policy conditions, the Tribunal granted an order of pay and recovery. Therefore, the second respondent/Insurance Company has to pay the compensation at first instance and thereafter, recover the same from the owner of the vehicle, without any separate legal proceedings. The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In M.C.O.P.No.1887 of 2012

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Towards Loss of Dependency	9,72,000
2.	Towards Loss of Love and Affection	2,00,000
3.	Towards Funeral Expenses	30,000
	Total	12,02,000
	Less 20% contributory negligence	**9,61,600**

(i) In M.C.O.P.No.1888 of 2012

S. No.	*Heads under which the amount is awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*
1.	Towards Pain and Suffering	20,000
2.	Towards Transport & Extra Nourishment	10,000
3.	Towards Disability (28x3000)	84,000
4.	Towards Medical Expenditure	3,902.43
5.	Towards Loss of Amenities	10,000
6.	Towards Attender Charges (3x500)	1,500
	Total	1,29,402.43
	Less 20% contributory negligence	**1,03,521.944 (rounded off Rs.1,03,522)**

7. The present appeals have been filed only questioning the liability on the part of the Insurance Company and hence, this Court is not dealing with the question of quantum of compensation.

8. The learned counsel for the appellant/Insurance Company has submitted that the offending vehicle is a goods carrying vehicle. On the

date of accident, the deceased and the injured claimant, who were minors were travelling as gratuitous passengers in TATA ACE Van. Further, the driver, who drove the goods vehicle was also a minor and he did not possess any valid licence. The Tribunal further held that the first respondent/owner of the goods violated the policy conditions by permitting the minor to drive the goods vehicle. Therefore, the owner of the goods vehicle is vicariously liable to pay compensation. In this case, neither the owner of the goods nor employees of the owner of the goods were travelled as passengers and therefore, the policy does not cover either for unauthorised passenger or gratuitous passengers. The Tribunal though accepted that the Insurance Company is not liable to pay compensation directly to the deceased and the injured, however, directed the appellant/Insurance Company to pay compensation to the claimants and recover the same, which is against the proposition of law. Therefore, the order of the Tribunal may be set aside and the appeal may be allowed.

9. Heard the learned counsel for the appellant and perused the records.

10. Despite service of notice, the respondents have not chosen to enter appearance either through a counsel or in person.

11. The accident was admitted. The offending vehicle insured with the appellant was also admitted. Now, the only question that arises for consideration in this appeal is as to whether the liability fixed on the Insurance Company is sustainable.

12. A copy of the Insurance policy/Ex.R3, clearly shows that offending vehicle is TATA ACE Van bearing Registration No.TN-05-AJ-3593, which is a goods carrying vehicle. The relevant terms and conditions of the Policy are extracted hereunder :

> "***Driver's Clause : Persons or Classes of person entitled to drive***
> *Any person including the insured : Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner's licence may also drive the vehicle when not used for transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.*

> ***Limitation As To Use :***
> *The Policy covers use only for carriage of goods within the meaning of Motor Vehicles Act. Policy does not cover : 1) Use for organised racing, pace miking, reliability trial, speed testing 2) Use wilst drawing a trailer except towing (other than for reward) of any one disabled mechanically propelled vehicle. 3) Use for carrying passengers is vehicles; except employees (other than driver) not exceeding the no. permitted in registration document and coming under purview of workmen's Comp Act 192."*

13. The main contention raised by the learned counsel for the appellant is that the deceased and the injured claimant were travelling as a gratuitous passengers in the goods vehicle, which is meant for carrying goods and the driver drove the said vehicle without valid driving licence, which is in violation of policy conditions and hence, the Insurance Company is not liable to pay compensation. Though the Tribunal arrived at such a finding, however, instead of fixing the liability on the owner of the vehicle, erroneously directed the appellant/Insurance Company to pay the compensation, and thereafter, recover the same from the owner of the vehicle.

14. This Court as a final Court of fact finding re-appreciated the entire evidence and finds that the offending vehicle is a goods carrying vehicle. At the time of accident, the deceased and the injured claimant were travelling as gratuitous passengers along with five other friends in the said vehicle and the driver of the offending vehicle was a minor and he did not possess any valid licence, which are against the policy conditions. Further, the gratuitous passengers are not covered either under Section 147 of Motor Vehicles Act or under the policy. If there is any violation of policy conditions or statutory violations are brought before the notice of the Tribunal, then the Tribunal has to scrutinize the policy documents with reference to the provisions of the Motor Vehicles Act and Rules and come to a conclusion whether the Insurance Company is liable to pay compensation or not.

15. In the case on hand, the Tribunal rightly found that the deceased and the injured claimant travelled only as gratuitous passengers and the driver drove the offending vehicle without valid driving licence and therefore, the owner of the offending vehicle is solely liable to pay compensation. Then there is no reason whatsoever, to order for pay and

recover from the Insurance Company. The Tribunal ought not to have granted pay and recover by fixing the liability on the Insurance Company.

16. Considering the above facts and circumstances, this Court is of the opinion that the findings of the Tribunal in ordering pay and recover is not proper. Thus, the claimants are entitled to get compensation from the owner of the TATA ACE Van bearing Registration No.TN-05-AJ-3593.

17. The quantum of compensation awarded by the Tribunal is just and fair and hence, the same is confirmed in both the appeals.

18. In view of the above, these Civil Miscellaneous Appeals are allowed by setting aside the common award and decree passed in M.C.O.P.Nos.1887 and 1888 of 2012, insofar as the fixation of liability on the Insurance Company is concerned.

19. The owner of offending vehicle is directed to deposit the entire award amount along with 7.5% interest and costs awarded by the

Tribunal, from the date of claim petitions till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants as held in the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the award amount in the ratio mentioned by the Tribunal, less the amount already withdrawn, if any, together with interest and costs. The appellant/Insurance Company is permitted to withdraw the amount already deposited, if any. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.07.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal
   (VI Court of Small Causes),
   Chennai.

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

P.VELMURUGAN, J.

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C.M.A.Nos.457 and 458 of 2018

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