IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.Nos.3444 to 3447 of 2014 and 557 of 2017
MP.1 to 1 of 2014 and 3355 of 2017

United India Insurance Company Limited
Cuddalore ...Appellant in all CMAs

...Vs...

1. Vasanthamari ...R1-CMA.3444 of 2014

2. Kamsala ...R1-CMA.3445 of 2014

3. Arokiyameri ...R1-CMA.3446 of 2014

4. Elisabath Rani ...R1-CMA.3447 of 2014

5. Anbazhaki

6. Santhi

7. Ramapathy

8. Saritha

9. Anandhi

10.Mangammal ...RR1 to 6-CMA.557 of 2017

11.Narthinavel ..R2-CMA.3444 to 3447 of 2014 and R7-CMA.557 of 2017

Prayer:- These Civil Miscellaneous Appeal Suit have been filed, against the judgement and decree, dated, 31.01.2014, passed in MCOP.Nos.90, 91, 92 and 93 of 2011 and dated 30.09.2015 passed in MCOP.No.95 of 2012, by the Sub Court (MACT) at Chidambaram and Subordinate Judge (MACT) Neyveli, respectively.

For Appellants : Ms.I.Malar-CMA.No.3444 to 3447 of 2014
Mr.R.Rathnathara-CMA.No.557 of 2017

For Respondent:Mr.A.Murughan-R1-CMA.No.3444 to3447 of 2014
Ms.R.Meenal-R2-CMA.No.3444 to 3447 of 2014
Mr.S.Pushpakaran-CMA.No.557 of 2017
R6-No Appearance
Mr.B.Manoharan-CMA.No.557 of 2017

JUDGMENT

These Civil Miscellaneous Appeal Suits have been filed, by the Appellant Insurance Company, against the judgement and decree, dated, 31.01.2014, passed in MCOP.Nos.90, 91, 92 and 93 of 2011 and dated 30.09.2015 passed in MCOP.No.95 of 2012, by the Sub Court (MACT) at

Chidambaram and Subordinate Judge (MACT) Neyveli, respectively. For the sake of convenience, the parties herein after referred to as they were arrayed before the Tribunal.

2.The facts leading to filing of these appeals are as follows:-

(i)When on 25.01.2010, the Petitioners/claimants in MCOP.Nos.90 to 93 of 2011 and the deceased Somu, whose legal heirs are the claimants in MCOP.No.95 of 2012, were travelling in a mini lorry, bearing Reg.No.TN-31-P-2596 from Palayamkottai to Cuddalore, near Penthanayakkankuppam village at about 3.00 PM., the rear tyre of the said vehicle burst, due to which, the said vehicle capsized.

(ii) In that accident, the Petitioner in MCOP.No.90 of 2011, aged about 45 years sustained grievous injury at her left hand and right head and all over the body. The Petitioner in MCOP.No.91 of 2011, aged about 38 years had sustained grievous injuries and fractures at her left and right hand and injuries all over the body. The Petitioner in MCOP.No.92 of 2011 aged about 36 years had sustained grievous injuries at her left side head, left fore head, left ear and fractures at her right and left leg foot and injuries all over the body. The Petitioner in MCOP.No.93 of 2011 aged about 30 years, had sustained grievous injuries on both her hands and fractures at her left shoulder, left fore head, right check and right hand wrist. The injured claimants took treatment at Hospitals as in patients. The deceased Somu died in the hospital. Hence, the above claim petitions have been filed, claiming compensation amounts of Rs.4,00,000/-, Rs.5,00,000/, Rs.5,00,000/- and Rs.5,00,000/- by the injured claimants respectively. MCOP.No.95 of 2012 was filed by the claimants, who are the wife and children of the deceased Somu, who died in the said accident, claiming a compensation of Rs.10,00,000/-.

(iii)The 1st Respondent, who is the owner of the lorry and the 2nd Respondent Insurance Company had contested the claim petitions, by filing separate counters. Since the accident involved is one and the same in all the cases, a joint trial was conducted in CMA.Nos.3444 to 3447 of 2014 and a separate trial was done in CMA.No.557 of 2017. In CMA.Nos.3444 to 3447 of 2014, on the side of the claimants, PW.1 to PW.5 were examined and Ex.P1 to Ex.P27 were marked and on the side of the Respondent/Insurance Company, RW.1 was examined and MOs.1 to 4 were marked. In CMA.No.557 of 2017, on the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P7 were marked and on the side of the Respondent/Insurance Company, RW.1 was examined and Ex.R1 and Ex.R2 were marked.

(iv)The Tribunal, finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending mini lorry, the Tribunal has awarded a total compensation of Rs.89,500/- in MCOP.No.90 of 2011, Rs.1,21,500/- in MCOP.No.91 of 2011, Rs.69,500/- in MCOP.No.92 of 2011 and Rs.86,050/- in MCOP.No.93 of 2011 with interest at 7.5% p.a. from the date of the petition till the date of deposit. In MCOP.No.95 of 2012, the Tribunal has awarded a total compensation of Rs.8,39,000/-, with interest at 9% p.a. from the date of the petition till the date of deposit. The Tribunal has further directed the 2nd Respondent/ Insurance Company, first to deposit the compensation with interest as stated above and then recover the same from the 1st Respondent. Aggrieved by the same, these appeals have been filed by the 2nd Respondent / Insurance Company.

3.The learned counsel for the appellant/Insurance Company would submit that after the Claims Tribunal having come to the conclusion that the Insured/Owner of the Vehicle has violated the Law, permit and Policy conditions by carrying about 60 persons in the offending Goods Vehicle while there is seating capacity of three, the Insurance Company should not have been held liable or responsible to pay the compensation with a direction to recover the same from the owner of the vehicle without relying upon documentary evidences of Ex.P1- FIR, Ex-R1-Policy of the Lorry and Ex.R2-R.C of the Lorry as well as oral evidence of R.W.1 (Insurance Official) which is unsustainable and contrary to the Law.

4. In support of her argument, he would rely on the Judgment of the Hon'ble Supreme Court in the case of *"New India Assurance Co. Ltd. Vs. Asha Rani and others",* reported in CDJ *2003 SC 064* wherein the Hon'ble Supreme Court overruling with the view expressed by the Hon'ble Supreme Court in *"New India Assurance Co. Ltd. Vs. Shri Satpal Singh and others"*, reported in *2000 1 SCC 237* held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal was not justified in holding that the insurer had the liability to satisfy the award.

5. Further, he would also place reliance on the Judgment passed by this Court in the case of *"Bharati AXA General Insurance Co. Ltd. Vs. Aandi and others"* reported in *2018 (2) TN MAC 731 (DB)* wherein it was held that the passenger in the goods vehicle is an unauthorized passenger and he will not be covered by the policy of Insurance, therefore the Insurance Company cannot be directed to pay the compensation with liberty to recover from the owner since there is no statutory requirement to cover a person, who travels as passenger in any type of vehicle after discussing the scope of Sections 147 & 149 of the Motor Vehicle 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. While the passengers travelled in the said Goods vehicle have not come under the above category, the Insurance Company should not have been held liable for pay and recovery.

6. From the aforesaid Judgments, it is made clear that while there is a specific bar on carrying of any passengers in the Goods vehicle

without adhering to the terms and conditions of the Insurance Policy, the Insurance Company would have no liability. In this case, as the respective petitioners in the claim petitions travelled in the lorry as gratuitous passengers, the owner of the vehicle committed violation of policy condition and therefore, the petitioners are not entitled to any compensation from the Insurance Company.

7. The learned counsel for the appellant would further submit that the Hon'ble Supreme Court by virtue of its extraordinary powers considering the facts and circumstances of the case has issued direction to the Insurance Company to pay the compensation under pay and recovery basis. But nowhere in a claim where 60 passengers were carried in a goods vehicle as passengers wilfully breaching the contract of Insurance by the insured was authorized and direction to pay and recover was issued.

8.Per contra, the learned counsel for the respondents would submit that the Motor Vehicle Act is one of the beneficial legislations and the object of the Act is to pay compensation to the victims of the road accident who due to sudden and unpredictable circumstances met with an accident.

While such a beneficial Act meant for compensation to the poor victims who had injured in the road accident, the denial of the compensation to the victims even by way of pay and recover is irrational and impermissible.

9.It has been further submitted by the learned counsel for the respondents that travel of passengers in goods vehicle due to unavoidable circumstances or for the social cause itself cannot be said to be the cause of the accident to deny the compensation by the Insurer which would soon drive the Courts to fix the liability on the Insurer to pay the compensation even for such a travel in goods vehicles depending upon the facts and circumstances of the case.

10. Further, the learned counsel for the respondents relying upon the Judgment in "*Anu Bhanvara & others Vs. Iffco Tokio General Insurance Co. Ltd. & Others reported in 2020 20 SCC 632 and "Oriental Insurance Co. Ltd. Vs. Shri. Nanjappan and others* wherein it was uphold the principle of Pay and recover for victims travelled in Goods Vehicle. Thus, having considered the facts and circumstances of the case, an award for pay and recover can be passed in respect of the victims (both injured and deceased) travelling in a goods vehicle.

11.The learned counsel for the respondents would further submit that the claimants are very poor and the nature of injuries had made them immobile and incapable, the direction for pay and recover is absolutely unavoidable. At the same time, the pay and recover need not be ordered for accident taken place while travelling in costly cars as the owner of such car would definitely be financially sound. Hence, the Civil Miscellaneous Appeals filed by the Insurance Company is unsustainable and liable to be set aside.

12. Heard the learned counsel for the appellant and the learned counsel for the respondents as well as perused the materials available on record.

13.In these appeals, there is no serious argument raised with regard to the quantum of the compensation and other aspects except question of the liability of the Insurance Company to pay the compensation and recover the same from the owner of the vehicle despite violation of policy condition has been confirmed by the Insurance Company.

14. In the award of the Tribunal, it is confirmed that the rash and negligent driving of the first respondent who is the driver of the vehicle is the cause for the accident. Thereafter, the offending vehicle bearing Registration No.TN 31 P 2596 is a Goods Carrier and as per the Clause of the Insurance Certificate prohibits transporting passengers in the said vehicle. Whereas the driver of the vehicle allowed about 60 passengers in the said offending Goods Carriage which has been corroborated with the Ex.P1-FIR and testimony of claimants in the claim petitions.

15.Under such circumstances, even though it has been confirmed that the cause of the accident took place due to to rash and negligence driving of the driver of the offending vehicle and there is a violation of policy in carrying the unauthorized passengers in the said Goods Vehicle, the Tribunal has applied the Principle of Pay and Recovery and directed the Insurance company to pay the compensation amount to the claimants and later recover from the owner of the Offending Vehicle.

16. On a perusal of the Judgments relied upon by respondents and the submissions made by them, it can be seen that in the event of pay and

recovery each Judgment has been passed by the Hon'ble Supreme Court keeping in view of the peculiar facts and circumstances of the case. The Judgments of the Supreme Court being cited as a precedent for passing of pay and recovery in the special circumstances of the case, are under Article 142 of the Constitution of India wherein the Supreme Court has got all the powers to pass any order or Decree as may be necessary for doing complete justice in any matter pending before it. Further, in the reliance of the Judgements by the learned counsel for the respondents, the number of the gratuitous passengers in the Goods vehicle is meagre but, in the instant case, more than 60 gratuitous passengers were travelled in the Goods vehicle breaching the contract of Insurance Policy which cannot be acceptable. Hence, in the case on hand, the Tribunal was not right in directing the Insurance Company to pay compensation giving it liberty to recover the same from the insured.

17.Having considered the entire Judgments relied by the learned counsel on either side and submission made by the learned counsel for both parties, and also considering the fact in the present case that in the offending goods vehicle, more than 60 passengers were allowed, as gratuitous passengers to whom there was no insurance coverage and also the fact that undisputedly, they have not travelled in the goods carriage in the capacity of owners of goods or representatives of owner of goods being transported in the goods carriage, this Court with no hesitation, has come to the conclusion that the appellant/Insurance Company is not liable to pay the compensation awarded to the claimants by the Tribunal and the sum awarded by the tribunal has to be paid by the owner of the vehicle, since the driver of the said goods vehicle is solely responsible for the accident.

18. In the result, the Civil Miscellaneous Appeals are allowed, setting aside the award dated 31.01.2014 made in MCOP.Nos.90, 91, 92 and 93 of 2011 and dated 30.09.2015 made in MCOP No.95 of 2012 by the Sub-Court (MACT) at Chidambaram and Sub-Ordinate Judge (MACT), Neyveli, respectively, in so far as the Appellant-Insurance Company alone. The award passed by the tribunal is modified accordingly. Consequently, connected miscellaneous petitions are closed if any. No Costs.

21.12.2023

Srcm/Lbm
Index:Yes/No
Web:Yes/No
Speaking/Non Speaking

A.A. NAKKIRAN., J.

Srcm/Lbm

To

1. The Sub Court (MACT) at Chidambaram,
2. The Subordinate Judge (MACT) Neyveli,
3. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.Nos.3444 to 3447 of 2014
and 557 of 2017

21.12.2023