IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3460 of 2014

1. Karpaganathan
2. Rangasamy
3. Saraswathy ...Appellants

Vs.

1. M.Kavitha
2. United India Insurance Co. Ltd.,
   No.2/178 Erode Road,
   Perundurai. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 10.07.2014 made in M.C.O.P.No.19 of 2012 on the file of the MACT/Additional District Court No.3, Tharapuram in exonerating from liability of the 2nd respondent/insurer is concerned.

For Appellants : Mr.N.S.Sivakumar

For Respondents : No Appearance, for R1
Mr.C.Paranthaman, for R2

JUDGEMENT

Challenging the judgment and decree dated 10.07.2014 made in M.C.O.P.No.19 of 2012 on the file of the MACT/Additional District Court No.3, Tharapuram, the claimants are before this Court.

2. The case of the appellants is that, on 10.08.2011 at about 7.30 pm, when the deceased Nagammal was travelling as a passenger in the van bearing Regn. No.TN-37-C-5559, owned by the 1st respondent, insured with the 2nd respondent, along with her Pongal articles, along with other passengers from Vattamalai Temple to Kangayam, due to the rash and negligent driving of the driver of the said van, the above said vehicle dashed against the Lorry which came in the opposite direction, as a result of which, the said Nagammal sustained fatal injuries and got admitted in the hospital, however she subsequently passed away. Thereby, the appellants/claimants filed a Claim petition claiming a compensation of Rs.5,00,000/-. After contest, the Tribunal, vide impugned judgement awarded a sum of Rs.4,43,400/- and fastened the entire liability as against the 1st respondent/owner of the vehicle, while

absolving the insurer. Aggrieved by the said order, the appellants have come up with this Appeal, questioning liability of the owner of the vehicle.

3. Learned counsel for the appellants submitted that, when the accident happened solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, which was insured with the 2nd respondent, the liability should have been jointly and severally made liable to pay compensation to the appellants and the insurer ought to have been directed to pay compensation to the appellants. Further, even if the deceased is found to be a gratuitous passenger, the Tribunal ought to have directed the Insurance company to pay the amount and thereafter recover the same from the owner of the vehicle/1st respondent, as it was ordered in the Claim petitions filed by the injured persons who travelled along with the deceased in the above said van at the time of accident. Therefore, this Court may direct the 2nd respondent/Insurance company to pay and recover the amount from the 1st respondent.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, the carrying capacity of the van is only three, whereas about

fifteen have travelled in the above said van at the time of accident, which is a clear violation of the policy condition. Further, the goods which had been loaded in the van were not goods in the literal sense and that the deceased who was accompanying the goods cannot be said to have been hired for the purpose of accompanying the goods so as to step into the shoes of the owner to claim compensation. The Tribunal has rightly analysed the said facts and has held that it is only the 1st respondent who is liable to pay compensation to the LRs of the deceased and has absolved the insurance company, which finding does not warrants interference of this Court. Accordingly, he prayed for dismissal of this Appeal.

5. Heard learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties. Equally, there is no dispute with regard to the fact that the above said accident happened due to the rash and negligent driving of the driver of the 1st

respondent van. Therefore, this Court is not entering into the said aspects. The only issue is whether the 2nd respondent/Insurance company or the 1st respondent/owner of the vehicle is liable to pay the compensation in spite of the fact that the van was insured with the 2nd respondent.

7. There is no dispute about the fact that about 15 persons have travelled in the van which has a carrying capacity of three. The van was carrying Shreedhana articles and it was accompanied by the deceased and her relatives. Therefore, by no stretch could it be held that the articles were in the nature of goods and that the deceased steps into the shoes of the owner so as to bring the deceased within the ambit of a person working for hire. When the deceased had accompanied the Shreedhana articles, the deceased partakes the character of a gratuitous passenger and the 2nd respondent/insurance company cannot be fastened with the liability to pay compensation in respect of a gratuitous passenger.

8. The above issue has been considered by the Hon'ble Division Bench of this Court in the case of ***Bharati AXA General Insurance Co. Ltd., Vs.***

Aandi and others in CMA.Nos.1529 to 1533 of 2015, wherein this Court has held as hereunder :-

"48. Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.

49. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in

(2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

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., 1st respondent 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. "

9. In view of the above fact, the above decision is squarely applicable to the case on the hand. The order passed by the Tribunal is based on appropriate appreciation of the oral and documentary evidence and therefore no interference warranted with the same.

10. For the reason aforesaid, this appeal stands dismissed. The 1st respondent-owner of the van is directed to deposit the compensation amount as awarded by the Tribunal, to the credit of M.C.O.P.No.19 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a

copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

11.10.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accident Claims Tribunal/
Additional District Court No.3, Tharapuram.

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

M.DHANDAPANI, J.

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C.M.A.No.3460 of 2014

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