IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.3572 and 3573 of 2014
and
Miscellaneous Petition Nos.1 and 1 of 2014

C.M.A.No.3572 of 2014:

The New India Assurance Co., Ltd.,
Branch Office, Door No.17,
II Floor, Fort Main Road,
Shevapet, Salem-2. ... Appellant / 2nd respondent

Vs.

1. Preetha
2. Minor Ajeeth @ Vijeeth
3. Minor Harni
   [Minor claimants represented by their mother, Preetha
   1st respondent herein]
4. Kandayee
5. Mathan @ Maran … Respondents/Petitioners
6. Ramayee ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 17.04.2014 made in M.C.O.P.No.55 of 2012, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Rasipuram.

For Appellant	:	Mr. M. Krishnamoorthy
For R1 to R5	:	Mr. K. Suryanarayanan
For R6	:	AOS not filed

C.M.A.No.3573 of 2014:

The New India Assurance Co., Ltd.,
Branch Office, Door No.17,
II Floor, Fort Main Road,
Shevapet, Salem-2. ... Appellant / 2nd respondent

Vs.

1. Pazhanisamy ... Respondent / Petitioner
2. Ramayee … Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 17.04.2014 made in M.C.O.P.No.65 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Rasipuram.

For Appellant	:	Mr. M. Krishnamoorthy
For R1	:	Mr. K. Suryanarayanan
For R2	:	AOS not filed

COMMON JUDGMENT

The Insurance Company filed both these appeals, challenging the common award passed by the Tribunal in M.C.O.P.Nos.55 and 65 of 2012 respectively, dated 17.04.2014, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Rasipuram, wherein, the Tribunal has awarded compensation for a sum of Rs.12,57,500/- and Rs.8,38,500/- along with interest respectively in favour of the claimants therein.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimants are as follows:

The deceased Duraisamy and the injured Palanisamy along with others engaged in coolie work for loading and unloading bricks, on 04.12.2011 and while they were returning after unloading bricks on Salem-Namakkal National Highways Road, Near Mallur Vedha Vikas School at about 4.00 p.m., the driver of their vehicle, bearing Registration No.TN 30 C 8590, driven it in rash and negligent manner, at that time, a bicycle crossed the road without noticing the Mini lorry, and the driver applied sudden brake, the Mini Lorry capsized, resulting injuries to the persons travelled in the Mini Lorry. The deceased Duraisamy was succumbed to the injuries and his legal heirs have filed claim petition, claiming compensation for a sum of Rs.15,00,000/- for the death of one Duraisamy and the Palanisamy filed separate Claim Petition, claiming compensation for a sum of Rs.20,00,000/- for the injuries sustained by him.

4. Before the Tribunal, the first respondent remained ex-parte and has not contested the claim petition.

5. The second respondent filed counter and contended that the deceased and the injured were travelled in the Mini Lorry as an unauthorized gratuitous passengers hence the Insurance Company is not liable to pay the compensation on behalf of the first respondent who was committed the breach of statutory rules and also violated the policy conditions and that totally 7 persons were travelled at the time of accident hence, disputed the claim of the claimants in both the petitions.

6. Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to R4 were marked.

7. The Tribunal after considering the evidence placed on record in Point No.1 has held that the accident was occurred due to the rash and

negligent driving of the driver of the first respondent's vehicle. In Point No.4, it is held that the deceased and injured along with others were not travelled as unauthorized passengers and they were travelled only as a loadmen and there is no violation of policy conditions and that the claimants are entitled for claiming compensation for the negligent act of the first respondent driver. In Point No.2, the Tribunal has awarded a sum of Rs.12,57,500/- as the compensation for the death of the deceased Duraisamy. In Point No.3, the Tribunal has awarded a sum of Rs.8,38,500/- as compensation for the injuries sustained by Palanisamy.

8. Aggrieved over the award of compensation, by questioning the finding of the Tribunal that the injured and the deceased have not travelled as a loadmen, this appeal has been filed by the Insurance Company on the ground that the injured and the deceased have been travelled only as an unauthorized passengers.

9. The learned counsel appearing for the Insurance Company has submitted that there is no policy coverage for the loadmen in the insurance policy, as per Ex.R3-Copy of Insurance Policy and factually also

there were totally 7 persons travelled in the vehicle and they could not be termed as a loadmen and they are only unauthorized passengers. Since the excess passengers were travelled in the vehicle, prays to absolve the Insurance Company from paying compensation. He relied on the Judgment of the Hon'ble Apex Court in ***New India Assurance Co. Ltd., v. Asha Rani and Ors*** reported in ***2001 (6) SCC 724*** and ***National Insurance Co. Ltd., v. Baljit Kaur*** reported in ***2004 (2) SCC 1.***

10. Per Contra, the learned counsel for the claimants submitted that in Ex.R3-Copy of Insurance Policy shows that it is a package policy. As per the premium collected shows that there is coverage to the driver and also to the loadmen. This has been properly appreciated by the Tribunal and factually, the claimants have proved their case that they are travelled in the vehicle for loading and unloading bricks which are transported from Salem-Namakkal. Since they are covered by the insurance policy, they have been rightly granted compensation by the Tribunal and hence, prays to confirm the compensation.

11. I have considered the rival submissions made on both sides

and also perused the records available on record.

12. Before the Tribunal, the respondents have marked Ex.R3-copy of the Insurance Policy. On a perusal of the same, in the schedule of premium on the liability side column, it is stated that Basic TP cover under the same, LL to persons employed for opn and/or maint.and/or load and TP premium of Rs.5,995/- is collected. In the cross examination of R.W.1, it was admitted by the Insurance Official that, this insurance policy is a package policy. For the suggestion that this policy covers to all the loadmen, he has replied that, he was not aware about the same. He has also admitted that the component of the package policy has not been listed out and it has been stated in a single heading. This Court is of the view that the evidence of R.W.1-the official of Insurance Company is sufficient to hold that this package policy contains coverage to the driver and the loadmen and also the third party. Accordingly, the Tribunal has rightly held that the loadmen are also covered by the Insurance policy and if the petitioners were travelled as a loadmen, they are also entitled for compensation. To prove the fact that the injured and the deceased were travelled in the Mini Lorry only as a loadmen, they have examined P.W.1 and P.W.2.

13. P.W.1 was the injured in the accident and he has stated that on 12.11.2011 at about 4.00 p.m., he was travelled in the Swaraj Masta Mini Lorry, bearing Registration No.TN 30 C 8590 on Salem-Namakkal, National Highways Road, while their vehicle reached near Mallur, Vedha Vikas School in a high speed and to avoid hitting on the bicycle, the driver of the Mini Lorry has applied sudden brake, and the Mini Lorry was capsized resulted in causing injuries to him and also others who were travelled along with him in the offending vehicle. Immediately, he was taken to the Government Hospital, Salem. In the cross examination, it is elicited from him, that he along with one Raja, Anandan, Elango and the deceased Duraisamy were travelled in the vehicle. He has also admitted that, at the time of accident there was no load inside the vehicle but, while returning after unloading bricks, the occurrence has taken place.

14. In support of his evidence, they were also relied on the recitals in Ex.P1-FIR, which was lodged by one of the person who travelled in the vehicle namely, Annadurai and he has stated that P.W.1 and the deceased Duraisamy along with others were working as coolie workers and

used to do loading and unloading work and that on 12.11.2011, at about 4.00 a.m., they have loaded bricks from Brick Kiln belongs to one Muthusamy and after loading bricks in the first respondent vehicle, unloaded the same at Salem bye-pass Vel Nagar, and while they were returning to Mallur after unloading bricks in the very same vehicle, due to over speed of the driver of the vehicle met with an accident.

15. The evidence of P.W.1, complaints in FIR and connected records clearly reveals that the injured and deceased were travelled in the Mini Lorry for the purpose of loading and unloading bricks and while they were returning after unloading bricks, they have sustained injuries due to the negligent act of the driver of the first respondent's vehicle.

16. This Court in ***Oriental Insurance Company Ltd., vs Nalluchamy [2015 (1) TN MAC 843]*** has considered the case of the claimant, who sustained injuries after unloading tomatoes bags, by incorporating Section 147 of the Motor Vehicles Act and by relying on the Judgment of the Kerala High Court has held in paragraph Nos.14 to 17 as follows:

"14. The provisions of Section 147(1)(b)(i) of the Motor Vehicles Act has to be construed liberally. It is not the case of the Insurance Company that the load auto did not carry the goods, ie., 3 bags of tomatoes of the claimant. Their case is that after unloading only he travelled and therefore he is not covered.

15. The judgment relied on by the learned counsel for the appellant is of no use. In that case, though the claimant made a claim that he travelled in the lorry along with the rice bags, this Court came to the conclusion that there was no evidence to claim that he travelled along with the goods. In those circumstances, this Court in United India Insurance Co. Ltd. v. Annamalai, reported in 2011 (2) TN MAC 737 came to the conclusion that the Tribunal has erred in fastening the liability on the Insurance Company when there is absolutely no evidence to the effect that the claimant travelled along with the goods in the lorry. But, in the present case, it is admitted that the tomato bags carried by the load auto belongs to the claimant. The only contention is that the accident took place when he travelled after unloading the goods and hence, he could not claim coverage.

16. In an identical circumstance, the Kerala High Court, in United India Insurance Co. Ltd. v. Velayudhan, reported in 2011(1) TN MAC 233 (Ker.) has held that though the accident took place while the lorry was returning after unloading the rice which was carried in the said vehicle, the Insurance Company is still liable. It is relevant to extract a portion of paragraph-5 of the said judgment, as under:

"It is true that nothing happened when the goods were taken. But the unfortunate incident took place while the lorry was returning after unloading the rice there."

> *17. In my view, the Judgment of the* ***United India Insurance Co., Ltd, v. Velayudhan, 2011 (1) TN MAC 233*** *(Ker.) (cited supra), covers the issue. Further, I am of the view that provisions of Section 147 of the Motor Vehicles Act has to be interpreted liberally and the main purpose is to grant compensation to the unfortunate accident victims. Unless it is established by the Insurance Company that they are not at all liable, the Insurance Company cannot escape from its liability to pay compensation, particularly when it is admitted that the tomato bags carried by the Load Auto belongs to the claimant and he being an Agriculturist, took these bags to the market and returned in the Auto, which carried the Tomato Bags and that the said Auto got involved in the accident at the time of return. Hence, in my view the Insurance Company is liable to pay compensation."*

17. In this case, the evidence produced before the Tribunal shows that, they have travelled in the goods vehicle as a loadmen, after unloading the goods the occurence had taken place and since there is also insurance coverage for loadmen, as per the agreement between the insurer and insured, the Insurance Company is liable to indemnify the first respondent. Eventhough, it is stated that there are more number of persons travelled in the lorry than the permitted capacity, this Court is of the view that the Tribunal has failed to appreciate the fact that, there is violation of

policy condition by allowing more number of persons to travel in the vehicle than the seating capacity. Since the claimants have made out the case that they are not gratutous passengers, the Tribunal ought to have adopted the principle of "Pay and Recover" for the violation of policy condition by allowing more persons to travel than the seating capacity as followed by the Judgment of the Hon'ble Apex Court in ***United India Insurance Company Ltd., vs. K. M. Poonam and Others [MANU/SC/1736/2011 :2011(101)AIC194]***. Accordingly, both the appeals filed by the Insurance Company is partly allowed.

18. In the result, Both the appeals are partly allowed. The commmon Award and Decree passed by the Tribunal in M.C.O.P.Nos.55 and 65 of 2012, dated 17.04.2014 is hereby modified. The second respondent-Insurance Company is directed to deposit the compensation awarded by the Tribunal less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.Nos.55 and 65 of 2012 and recover the same from the first respondent on the principle of "Pay and Recover". On such deposit, the claimants are entitled to withdraw the same. The Tribunal shall disburse the

amount by directly giving credit to the Savings Bank Account of the claimants. The share of the minor claimants are directed to be deposited in any one of the Nationalised Bank till the minor claimants attains majority. On such deposit, the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. In other aspects the award passed by the Tirubal shall stands confirmed. There shall be no order as to costs in both the appeals. Consequently, connected miscellaneous petitions are closed.

02.08.2023

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

To:

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal, Rasipuram.

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

K.RAJASEKAR,J.

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C.M.A.No3572 and 3573 of 2014

02.08.2023