IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1389 of 2021
and
C.M.P. No. 7137 of 2021

M/s. Cholamandalam MS General
Insurance Company Ltd.,
2nd Floor, Daye House,
No.2, NSC Bose Road,
Chennai - 600 001. ... Appellant / 2nd Respondent

Vs.

1. Raman ... Respondent / Petitioner

2. Shiva Kumar ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.03.2019 passed in M.C.O.P. No.53 of 2017 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Hosur.

For Appellant : M/s. R. Sree Vidhya

For R1 : Mr. P. Panchatsaram

For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed on them to indemnify the owner of the offending vehicle as per the Judgment and Decree passed in M.C.O.P. No.53 of 2017, dated 18.03.2019 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Hosur.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal. The case in brief is as follows.

3. The case of the claimant is that on 30.03.2013, the claimant travelled along with loaded tomatoes, which was harvested from his land to the Rayakottai Tomato market in a Bolero Camper (Pickup van) (Light goods vehicle) bearing Registration No.TN-70-A-5041, which belongs to the first respondent namely Shiva Kumar. The claimant was standing back side of the bolero camper vehicle along with other village farmers in the goods area, at about 8:00AM, while the vehicle reached near Sadhappa's

land in Dhooddamattari village, due to rash and negligent driving of the driver of the bolero camper vehicle, the vehicle lost the control and capsized, due to which, the claimant has sustained grievous injuries. A criminal case was also registered against the driver of the Bolero Camper (Pickup van) (Light Goods vehicle) bearing Registration No.TN-70-A-5041 in crime no.27/2013 under section 279, 337 of I.P.C on the file of Uddanapalli Police station. Due to the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.7,00,000/- from the respondents.

4. The first respondent, who is the owner of the vehicle has not contested the claim before the Tribunal and remained ex-parte. The second respondent - insurance company, who is the appellant herein has filed a counter and contested the claim on the ground that there were five persons including the claimant have travelled in the bolero camper vehicle and as per the policy condition, only three persons including the driver is permissible. The insurance company also disputed that the driver of the bolero camper vehicle was not having a valid driving licence to drive a goods vehicle and contended that the accident was taken place only due to

the rash and negligence driving by the driver of the vehicle. The insurance company also disputed the fact that the F.I.R. was registered after a delay of 5 days and also disputed the age, income, occupation of the claimant. The major contention of the insurance company is that there is a violation of policy conditions, hence, the respondent insurance company is not liable to pay the compensation to the claimant and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs. P.1 to P.12 were marked. On the side of the respondents R.W.1 was examined and Ex.R.1 to R.4 were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the rash and negligent act on the part of the driver of the bolero camper goods vehicle is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.3,85,564/- along with interest @ 7.5% p.a. from the date of petition till the date of realization and also held that there is a clear violation of policy condition but even though, the policy was in force at the time of occurrence,

hence, the Tribunal has ordered the second respondent insurance company to pay the compensation to the claimant and recover the same from the first respondent, who is the owner of the offending bolero camper goods vehicle.

7. Aggrieved over the liability fixed on the insurance company to indemnify the owner of the bolero camper goods vehicle by the Tribunal, this appeal has been filed by the insurance company.

8. The learned counsel appearing for the insurance company has submitted that there is an ample evidence placed on the record to show that the claimant herein was a gratuitous passenger and he travelled in the goods area. Even though, the Tribunal accepted the case of the insurance company that there is a violation of policy condition, but ordered pay and recovery, which is against the settled law laid down by various judgments of the Hon'ble Apex Court as well as by this Court.

9. Per contra, the learned counsel appearing for the claimant submitted that the claimant was travelled in the goods vehicle as a owner of the goods and the same has not been properly appreciated by the Tribunal.

Even though, in this case, the insurance policy of the offending vehicle was in force at the time of occurrence and allowing more persons to travel than the permitted capacity by the driver of the offending vehicle is not a ground for exonerating the insurance company. Based on this, the Tribunal has rightly awarded pay and recovery, hence prays to confirm the same.

10. Heard submissions made on both sides and perused the materials placed on record:

11. The Tribunal in its award, in this case has categorically held that the driver of the bolero camper vehicle is responsible for the occurrence and also violated the policy condition by allowing five persons to travel in the offending vehicle. The F.I.R., which was lodged after five days from the date of occurrence confirms that five persons were allowed to travel in the bolero camper offending vehicle by its driver. Driver of vehicle has admitted in his evidence that five persons had travelled in goods area by standing and there is also no evidence to show that there were tomato goods carried in the offending vehicle, hence the Tribunal has rightly held that there is violation of policy condition, for allowing gratuitous passenger.

12. In this case, the Tribunal has failed to follow the settled law laid down by the Apex Court judgment in ***New India Assurance Co. Ltd., vs. Asharani and others [2001 ACJ 1847],*** which was followed by the Division Bench of this Court in ***Bharati AXA General Insurance Co. Ltd. Vs. Anandi and others, [2018 (2) TN MAC 731 (DB)].*** Wherein it is held that for death or injury of a passenger/ gratuitous passenger in a goods vehicle, the insurer cannot be held liable and the insurer cannot even be directed to pay and recover the award amount where the policy is required to cover only certain classes of persons and there is no mandatory requirement for the insurer to cover persons travelling as passengers in goods vehicle unless the occupant is the authorised representative or the owner of the goods accompanying the goods. Wherein, in this case, there is clear violation of policy condition that five persons were allowed to travel in the goods area of the offending vehicle and there is also no evidence to show that the claimant travelled in the offending goods vehicle as owner of his goods. Hence, this Court is of the view that the claimant is entitled to get the compensation awarded by the Tribunal only from the first respondent, who is the owner of the offending vehicle and the second respondent -

insurance company, who is appellant herein is to be exonerated from the liability to indemnify the owner of the offending vehicle, accordingly, this appeal is allowed.

13. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. The second respondent - insurance company is also permitted to withdraw the amount already deposited, if any. There shall be no order as to costs in the present appeal.

22.11.2023

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

To:

1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Hosur.

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

K. RAJASEKAR, J.

stn

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