IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1512 of 2017

E.Velayutham @ Seeman
S/o.Etiappan ... Appellant / Petitioner

Vs.

1. J.Vasudevan
   S/o.Janakiraman

2. M/s.IFFCO TOKIO General Insurance
   Company Limited,
   No.28/195, 1st and 2nd Floor,
   North Usman Road,
   T.Nagar,
   Chennai - 600 017.
   (Policy No.37342416/9.8.07
   to 08.08.08) ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.08.2014 made in M.C.O.P.No.72 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantagam.

For Appellant : Mr.K.Govi Ganesan

For Respondents : R1 - Not ready notice
Mr.C.R.Krishnamoorthy for R2

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.72 of 2008, the appellant / claimant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The claimant is the appellant. He was involved in an road accident on 08.02.2008 when he travelled in a vehicle bearing Registration No.TN-21-M-3182 (mini door lorry), as a result of the accident, he was suffered grievous injuries with 85% disability. The claimant filed claim petition for a compensation of Rs.10,00,000/-. The Tribunal after carefully gone through the facts and circumstances of the case had arrived at a disability at 80% and awarded a sum of Rs.4,97,170/- as compensation fixing liability on the first respondent / owner of the vehicle.

3. Since the claimant was unable to recover the compensation amount from the first respondent, the claimant is before this Court by filing the present civil miscellaneous appeal.

4. The learned counsel appearing for the appellant / petitioner has challenged the award on the ground that the Tribunal ought to have directed the second respondent / Insurance Company to pay the compensation to the appellant and recover the same from the first respondent. That apart, the Tribunal failed to see that the liability of the Insurance Company to pay compensation to the victim or their dependent is statutory in nature and therefore, the Tribunal ought to have directed the second respondent / Insurance Company to pay the compensation and recover the same from the first respondent / owner of the vehicle. The learned counsel also relied upon the catena of decisions wherein various High Courts as well as Hon'ble Supreme Court have directed the Insurance Company to pay and recover in similar facts and circumstances of the case. On the above grounds, the learned counsel for the appellant / petitioner prays for allowing the appeal

by setting aside the award directing the Insurance Company to pay the compensation to the appellant and recover the same from the first respondent / owner of the vehicle.

5. Though notice has been served on the first respondent, none appeared on behalf of him.

6. The learned counsel appearing for the second respondent / Insurance Company submitted that the Insurance Company is not liable for the loss of injury suffered by the appellant or to indemnify the owner of the vehicle. He would further state that the mini door lorry bearing Registration No.TN-21-M-3182 involved in the accident in the present case being a goods vehicle did not have permit to carry passengers. However, the appellant was an unauthorised passenger in the goods vehicle and hence, the Insurance Company cannot be made liable to pay the compensation. Therefore, the direction to pay with liberty to recover from the insured cannot also be granted. That apart, he would further state that the accident

had occurred due to rash and negligence of the driver of the vehicle and that the owner of the vehicle violated the policy conditions by permitting the passengers to travel in his vehicle which meant for transporting goods. Therefore, the Insurance Company is not liable to indemnify to the first respondent / owner of the vehicle and consequently, are not liable to pay the compensation.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The issue involved in the present case is no longer *res integra* as this Court as well as other High Courts have time and again held that the Insurance Company cannot be made liable to pay compensation for gratuitous passengers who were neither contemplated at the time when the contract of insurance was entered into nor any premium was paid to the extent to extend the insurance to such category of people.

9. A Division Bench of this Court has dealt with this issue in detail in the case of ***Bharathi Axa General Insurance Company Ltd vs. Aandi and others*** reported in ***2018 (2) TNMAC 731*** wherein the Division Bench of this Court has held as follows:

> *"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.*
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> *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. "

10. This Court respectfully follows the decision arrived at by the Division Bench in the aforesaid decision. It is 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. However, the facts of the

present case alone cannot impel me to do something against the provisions of the statute and the decision of the larger benches of the Hon'ble Supreme Court of India.

11. In fine, this Civil Miscellaneous Appeal is dismissed with respect to the 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, i.e., first respondent. However, there shall be no order as to costs.

13.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,
   Sub Court,
   Madurantagam.

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

M.DHANDAPANI, J.

vji

C.M.A.No.1512 of 2017

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