IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.1461 & 1462 of 2020

S.Ganesan ...Appellant in CMA.No.1461 of 2020

S.Nagarajan ...Appellant in CMA.No.1462 of 2020

Vs.

1. N.Manigandan

2. IFFCO TOKIO General Insurance Co. Ltd.,
JH Towers, 2nd Floor,
Hotel Vasantham Road,
24/302 LIC Colony Road,
Salem – 4. ...Respondents in both CMA's.

Prayer in CMA.No. 1461 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in M.C.O.P.No.1714 of 2016 dated 11.03.2019 on the file of the Special District Judge for Motor Accidents Claims Tribunal, Salem.

Prayer in CMA.No. 1462 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in M.C.O.P.No.1906 of 2016 dated 11.03.2019 on the file of the Special District Judge for Motor Accidents Claims Tribunal, Salem.

In both CMA's.:

For Appellant : Mr.S.Sivakumar

For Respondents : Mr.S.Arun Kumar, for R2
: No Appearance, for R1

COMMON JUDGMENT

Since both the appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the common judgment and decree dated 11.03.2019 passed in M.C.O.P.Nos.1714 & 1906 of 2016 on the file of the Special District Judge for Motor Accidents Claims Tribunal, Salem, the claimants have come up with these appeals.

3. For brevity, the appellant in CMA.No.1461 of 2020 is hereinafter referred to as the 1st appellant and the appellant in CMA.No.1462 of 2020 is hereinafter referred to as the 2nd appellant.

4. The case of the appellants is that, on 24.03.2016, in order to provide better treatment for the leg injury sustained by their brother Murali

due to sudden fall in the temple, when the appellants along with their sister Rohini took the said Murali from Shanmuga Hospital, Salem to Ganga Hospital, Coimbatore in a NCL Ambulance bearing Regn.No.N-30-BC-7078 owned and driven by the 1st respondent, insured with the 2nd respondent, as the 1st respondent drove the ambulance in a rash and negligent manner, he lost the control and dashed on the back side of the lorry bearing Regn.No.TN-52-E-3438, as a result of which, the appellants and other occupants of the said Ambulance sustained grievous injuries all over their body and the brother of the appellants, the said Murali died on spot and the said Rohini, the sister of the appellants died on the way to the hospital. Thereby, the appellants filed their respective claim petitions claiming compensation for the injuries and loss of income sustained by them. After contest, the tribunal, vide impugned common judgment, awarded a compensation of Rs.2,03,675/- in favour of the 1st appellant and a sum of Rs.2,22,817/- in favour of the 2nd appellant, payable by the 1st respondent/owner cum driver of the Ambulance. Aggrieved with the said order, the appellants have come up with these appeals.

5. Learned counsel for the appellants submitted that, though the seating capacity of the Ambulance is only two, however, as per the decision of the Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd., Vs. K.M.Poonam and others*** reported in ***2011 ACJ 917***, wherein the Apex Court had clearly held that the tribunal ought to have directed the insurer to pay the amount and recover the same from the owner of the vehicle. For better appreciation, the relevant portion is extracted hereunder:

> "*26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam's case (supra). The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case (supra) and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the*

amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur's case.

27. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle."

5.1 In view of the above ratio laid down by the Hon'ble Apex court, the learned counsel for the appellants sought for extension of the benefit of pay and recovery in their case as well and sought for necessary direction of this Court directing the 2nd respondent/insurer to pay the compensation awarded by the tribunal in favour of the appellants and thereafter to recover the same from the owner of the vehicle in the manner known to law.

6. Per contra, the learned counsel appearing for the 2nd respondent submitted that, as per the conditions of the policy, the seating capacity of the insured vehicle is only two and at the time of accident, more than two people have travelled in the vehicle in question. Further, the driver cum owner of the vehicle was issued with valid licence for driving "Heavy Vehicle" only till 01.11.2013 and at the time of accident, the driver cum owner of the ambulance was not in possession of a valid licence for driving Heavy Vehicles. Further, when there is a violation of policy condition as well as the violation of the Motor Vehicle Act, the 2nd respondent being the insurer of the vehicle in question/ambulance cannot be made liable to indemnify the owner of the said vehicle in respect of the appellants herein and thereby, the Tribunal had rightly absolved the insurer of the liability. However, the tribunal, as per the seating capacity i.e.,2 persons, had fastened the liability as against the insurer in respect of the claims made in

respect of the death of the brother and sister of the appellants and directed the insurer to pay the compensation and recover the same from the owner of the vehicle.

6.1 Further, the issue which is raised in the present appeal is no longer *res integra,* as the similar issue has already been considered by the Apex Court in the case of ***United India Insurance Co. Ltd., Vs. Suresh K.K. and another*** reported in (***2008) 12 SCC 657***, wherein the Apex Court has held as hereunder:-

> *"9. The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner or the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Court is as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act No. 54 of 1994 was to widen the scope of the liability of the insurance company.*

10. It is now well settled that the term `any person' envisaged under the said provision shall not include any gratuitous passenger. (National Insurance Co. Ltd. v. Baljit Kaur 2004 (2) SCC 1). If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy.

6.2 It is further submitted that the aforesaid view has been followed by the Hon'ble Division bench of this Court in the case of ***United India Insurance Co. Ltd., Vs. Lashmamma*** in ***CMA.No.496 of 2021,*** wherein the Division Bench held thus :-

"16. We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle.

Rule 28 of the Central Motor Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mudguard of the Tractor. When there is a statutory violation that persons, who travels in the mud-guard is unauthorized passenger, we cannot burden the Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailor shows that it is an agriculture vehicle. The facts revealed that it was used for non-agricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability.

17.The irresistable conclusion in the light of the above discussion is that the Tribunal erred in directing the Insurance Company to pay a compensation with liberty to recover the same from the Insurer. This Civil Miscellaneous Appeal is therefore, allowed with a direction that the decision of the Tribunal to pay and recover alone will stand deleted. Since the owner has not questioned the owner of quantum of compensation, we do not interfere with the same."

6.3 In view of the above legal position, the learned counsel prayed for dismissal of these appeals, confirming the award passed by the tribunal.

7. Though notice was served on the 1st respondent and his name was printed in the cause list, however, none appeared on his behalf. Considering the period of pendency of this appeal, this Court is inclined to dispose of the same based on the materials available on record.

8. A careful perusal of the record reveals that as per the policy conditions, the seating capacity of the Ambulance is only two and at the time of accident 4 persons (excluding the driver) have travelled in the said vehicle. The appellants have travelled in the said ambulance, which is beyond the seating capacity of the ambulance and, therefore, to that extent the appellants could only be held to be gratuitous passengers, who would not be entitled to any compensation at the hands of the insurer.

9. Further, a perusal of the decision of the Hon'ble Apex Court in *Suresh K.K case (supra)* relied upon by the learned counsel for the 2nd respondent/insurance company makes it clear that, the unauthorised persons are not entitled for compensation at the hands of the insurer and following the same, the tribunal had rightly directed the owner of the vehicle to

compensate the appellants, in which this Court does not finds any fault with and, the same deserves to be confirmed.

10. For the reasons aforesaid, these appeals deserves to be dismissed and, accordingly, these appeals are dismissed, confirming the common award dated 11.03.2019 passed in M.C.O.P.Nos.1714 & 1906 of 2016. It is open to the appellants/claimants to recover the amount of compensation awarded by the Tribunal from the 1st respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in this appeal.

07.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Special District Judge for Motor Accidents Claims Tribunal, Salem.

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

M.DHANDAPANI, J.

skt

C.M.A.Nos.1461 & 1462 of 2020

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