IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2337 of 2017

M.Lakshmanan ... Appellant/petitioner

Vs.

1. V.Velusamy
2. D.Anandakumar
3. T.P.Thangaraj
4. United India Insurance Company Ltd.,
   Office at No.1, BOB Building 4th Floor,
   State Bank Road, Coimbatore-18.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 07.03.2017, made in M.C.O.P.No.828 of 2014, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr. Ma. P. Thangavel

For R1 to R3 : Ex-Parte

For R4 : M/s. I. Malar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant challenging the Order of exonerating the Insurance Company from indemnifying the owner of the vehicle and also for enhancement of compensation in the Award passed in M.C.O.P.No.828 of 2014, dated 07.03.2017, on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

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

3. The facts leading to filing of this appeal is that on 13.09.2009 at about 6.00 p.m., while the petitioner was travelling in Auto bering Registration No.TN 39 AE 0853 along with his friends on the Attaiyampalayam to Mettupalayam Road, while they reached near Ramesh Modern Rice Mill, Avinasi the driver of the Auto drove it in rash and negligent manner and due to his negligent act, the auto was capsized which resulted causing injuries to the petitioner and his friends. Immediately he

was admitted into various hospitals for treatment and subsequently, he has come forward with the claim petition claiming compensation of Rs.50,00,000/-.

4. The respondent – Insurance Company has filed counter and disputed that the driver of the Auto is not having valid driving licence and there is a violation of policy condition and also questioning the quantum of compensation awarded to the claimant.

5. The Tribunal, after considering the evidences placed on record has held that the driver of the Auto was responsible for the accident and the claimant is entitled for compensation for a sum of Rs.13,61,000/- to be payable by the second respondent being the owner of the Auto.

6. The learned counsel for the claimant has submitted that the injured has travelled in the vehicle as a representative of the owner of the goods which was transported in the vehicle, which was met with an accident. The learned counsel further submitted that since the petitioner is the representative of the goods, he is entitled for claiming compensation

under Section 147 of the Motor Vehicles Act. The finding of the Tribunal that the owner of the vehicle alone is liable to pay the compensation is not proper and consequently, exonerating the Insurance Company is liable to be set aside.

7. The learned counsel for the Insurance Company has submitted that there is no evidence placed on record to show that the injured herein has travelled in the goods vehicle along with goods. The Tribunal after appreciating the evidences placed on record has held that, the injured eventhough claims that he travelled in the vehicle as representative of the goods and the same has not been proved before the Tribunal hence the Tribunal has rightly held that the claimant is an unauthorized passenger travelled in the goods vehicle hence absolving the Insurance Company is proper.

8. I have considered the rival submissions made on both sides and also perused the materials placed on record.

9. The claimant himself was examined as P.W.1 and he has

stated that on 13.09.2009 at about 6.00 p.m., he was travelling in the Minidor Auto bearing Registration No.TN 39 AE 0853 belongs to his company while transporting cooking vessels from Mettupalayam to Padrakaliamman. He further stated that he was seated next to the Minidor Auto driver since the driver of the Auto has driven the vehice rashly and negligent manner, due to his negligent driving, the Auto was capsized near Attaiyampalayam near Ramesh Modern Rice Mill, Avinasi, which resulted in causing severe injuries to him. In the cross examination, it was elicited that the Auto, only one person can be seated and he was seated next to the driver seat. It was also suggested to him that some more persons namely Santhanakrishnan, S/o. Chandran; Tirupathy, S/o. Ponraj, Seenivasan, S/o. Ramanathan were also travelled in the auto and he denied the same. He further denied the fact that 7 to 8 persons were travelled in the auto, which resulted in accident.

10. The claimant has also examined his employer namely the Proprietor of M/s.V.K.S Garments, Tiruppur, he has stated that the claimant was working under him and he has deposed that he was running a Garments and was employed 13 persons. The claimants have also marked Ex.P7 which is the Registration Certificate of vehicle wherein, it is stated that

seating capacity of the vehicle is two in number.

11. The Insurance company has not disputed that the claimant herein has travelled in the cabin of the auto along with driver. They have contended that the claimant has travelled in the goods vehicle as an unauthorized passenger.

12. The claimant claimed that he travelled in the vehicle while transporting the vessels belongs to his employer since he is a representative of the owner of the goods, he is entitled for coverage whereas, the owner of vehicle was examined as P.W.2 and he has not deposed anything about the transportation of goods in the vehicle and further he has not even stated anything that he has engaged the claimant to bring his vessel. However, P.W.2 has come forward to mark Ex.P9 - Salary Certificate stating that the claimant was worked under him as a Over lock Tailor in the year 2008-2009 and was earning a sum of Rs.10,000/- per month and after the accident, he was stopped from attending work. The evidence of P.W.3 read with Ex.P9 shows that the claimant was engaged by P.W.2 in his concern.

13. The Insurance Company has also examined their officials

and the Insurance Policy was also marked. According to the Insurance Company, the policy is Act only policy and no other persons covered under the policy more particularly, the workmen of the insured. Further he has stated that at the time of accident, 8 persons travelled in the minidoor auto, which resulted in accident.

14. The learned counsel for the claimant has also relied on Ex.R2-Insurance Policy and submitted that there is a coverage of Workmen Compensation to the employee. Based on the evidences placed on record, the Tribunal has held that since the policy is Act only policy and there is no coverage for the claimant herein and he is not entitled for compensation. The Insurance Policy shows that there is a coverage for workmen of the owner of the vehicle.

15. According to the claimant, as per the instructions of the owner of the vehicle, he went to bring vessels which was used for conducting pooja for the Temple and while bringing the same, the auto capsized and suffered injury. In the FIR itself it is stated that many persons have travelled in the vehicle. As far as the claimant is concerned, he

travelled in the auto seated next to the driver which is permitted under the Registration Certificate however, there is no evidence to show that whether any instructions were given by the owner to do any work regarding transportation of vessels. The FIR-Ex.P1 which has been lodged by one of the injured person wherein, he has stated that due to over crowd, he was not able to get the bus from Mettupalayam Vanabadrakaliaman Temple to his home. It was informed by one Balan that his vehicle is returning from Vanabadrakaliaman Temple and instructed to travel in the said vehicle. Accordingly, they travelled from Vanabadrakaliaman Temple while their vehicle reached near Attaiyampalayam near Ramesh Modern Rice Mill, the vehicle got capsized and caused injuries to him and also various persons. He has also stated that many persons have suffered injuries. This evidence shows that at the time of accident many persons have travelled in the vehicle which itself is sufficient to prove that there is a violation of policy condition that too, permitting persons travelled in the goods area. However, it is the case of the claimant that he travelled in the cabin along with rider of the auto. According to him, he has been asked to bring back the vessels which was used at the Temple. In chief examination he has also stated that while transporting vessels the accident had taken place.

16. Ex.R1-RC Book shows the original name of insurance owner as Anandhakumar and subsequently, it was transferred in favour of one E.Thangaraj. It shows that the owner of the vehicle is Thangaraj and as per the Judgment of the Apex Court in ***Sanjeev Kumar Samrat vs. National Insurance Co. Ltd., and Other [2013 (1) TNMAC 15 SC]*** only the workmen of the owner of the vehicle alone shall be termed as a workmen and other persons travelled in the vehicle i.e., if any persons is hired and engaged another person who travelled in the vehicle, shall not be considered as a workmen falls within the definition of the workmen coverage made in the Insurance Policy. Hence the claimant herein is not entitled to claim compensation under the Workmen Compensation. However Section 147 (1) (b) (1) of the Workmen Compensation Act, states that the owner of the goods or its authorized representative came in the motor vehicle is statutorily covered and if it is statutorily liability on the Insurance Company.

17. In this case, Section 147 (b) (2) of the Workmen Compensation Act has been interpreted by the Hon'ble Apex Court in

Sanjeev Kumar Samrat vs. National Insurance Co. Ltd., and Other case cited above has categorically held that if as per statutory provision 147 (1) (b) (1) of the Motor Vehicles Act, the policy requires to cover including the owner of the goods or its authorized representative. In this case it is a satutory liability and even in the absence of contractual terms between the owner of the vehicle and the representative of the goods or the owner of the goods is statutorily covered and the Insurance Company is liable to pay compensation.

18. With regard to the factual aspects, on perusal of Registration Certificate, one Thangaraj is the owner of the vehicle. According to the claimant that their vehicle was engaged by the employer of the claimant herein who has been examined as P.W.2, whereas, he has not stated anywhere about the engagement of the auto regarding transportation of the vessels and there is also no evidence to show that whether the vessels were transported in the Auto. The FIR or any other connected materials also shows that there is no mention about the transportation of the vessels in the auto. In the absence of any material to show that the vessels were also transported in the auto, this Court is unable to appreciate the evidence of

P.W.1 that he was travelled in the vehicle as a representative of the owner of the goods, which is the vessels alleged to be transported. Since there is no evidence to show that the vessels were also transported and the evidence produced placed on record only shows that the minidoor auto, 8 persons were travelled in the vehicle which supports the case of the Insurance Company that no vessels were transported in the vehicle.

19. This aspect, this Court is of the view that the Award passed by the Tribunal that the claimant has travelled in the vehicle as a representative of the owner is not sustainable and the same is liable to be set aside and further the claimant shall be treated only as an unauthorized passenger in the goods vehicle. Accordingly, this Court is of the view that the Judgment of the Hon'ble Apex Court in ***New India Assurance Co. Ltd., vs. Asha Rani and Others [2000 (1) SCC 227],*** the claimant shall be treated only as a gratuitous passenger, and he is not entitled to get compensation from the Insurance company. Accordingly, the Award passed by the Tribunal that exonerating the Insurance Company from indemnifying the owner of the vehicle is proper.

20. As far as the quantum, Tribunal has considered the evidence adduced on the side of the claimant, and based on the year of accident and injury sustained, notionally fixed the income and by aopting multiplier method awarded compensation under various heads. This Court finds no ground to interfere in the quantum and same is hereby confirmed.

21. In the result, this Civil Miscellaneous Appeal is dismissed. The Award passed by the Tribunal in M.C.O.P.No.828 of 2014, dated 07.03.2017, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur is hereby confirmed. The second respondent is directed to deposit the entire compensation amount as awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.828 of 2014, on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur. On such deposit, the appellant/claimant is entitled

to withdraw the amount, along with proportionate interest and cots, less the amount, if any, already withdrawn. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

21.12.2023

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

To

1.The I Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR,J.,

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C.M.A.No.2337 of 2017

21.12.2023