IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.325 to 332 of 2017
and
C.M.P.Nos.2379 to 2386 of 2017

C.M.A.No.325 of 2017:

National Insurance Company Limited,
Branch Office - 1,
P.B.No.15/1, Govindaswamy Pillai Street,
Near Old Bus Stand,
Salem - 1. ... Appellant / 2nd Respondent

Vs.

1. Lakshmi ... 1st Respondent / Petitioner

2. Sakthivel ... 2nd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2012 made in M.C.O.P.No.5 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Salem.

For Appellant in all CMAs	:	Mr.K.Padmanabhan
For Respondents in all CMAs	:	No appearance for R1 R2 - Exparte

COMMON JUDGMENT

The present batch of civil miscellaneous appeals are filed against the individual award passed by the learned Principal Subordinate Judge, Salem, made in M.C.O.P.Nos.5 to 12 of 2009, dated 01.03.2012.

2. The Insurance Company is before this Court challenging the liability of the Insurance Company in payment of compensation.

3. For the sake of convenience, the parties are referred to as per their ranks before the Tribunal.

4. The brief facts that are necessary for the disposal of the above

appeals is that on 19.01.2003 at about 8.30 am., when the claimants were travelling in a van bearing Registration No.TN-33-A-1811, the driver of the van drove the vehicle in a rash and negligent manner and lost control of the vehicle, as a result of which the claimants suffered grievous injuries. The first respondent i.e., owner of the vehicle remained *ex-parte* before the Tribunal and the second respondent / Insurance Company contested the claim on the ground that the vehicle is a goods vehicle intended to carry goods only and since there is no policy coverage for the passengers travelling in a goods vehicle, the Insurance Company was not liable to pay any compensation to the claimants. That apart, the age, income and avocation of the claimants were also denied.

5. The Tribunal after considering the oral and documentary evidences had come to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the vehicle and insofar as the liability of the second respondent / Insurance Company is concerned, The Tribunal by relying upon Ex.R1 - Insurance Policy, wherein, it was

specifically stated that the policy does not cover use for carrying passengers in the vehicle except employees not exceeding six in members, came to the conclusion that there was a breach in policy conditions. However, the Tribunal held that the second respondent / Insurance Company's liability towards the claimants is not affected by the fact that there was violation of a condition, the Insurance Company shall be entitled to pay and recover the compensation from the first respondent / owner of the vehicle. Accordingly, the Tribunal allowed the claim petitions awarding a sum of Rs.25,000/- in each of the claim petitions and ordered to deposit the award amount with interest at 7.5% per annum from the date of petition till the date of deposit with proportionate costs and the same shall be recovered from the first respondent, i.e., owner of the vehicle. Challenging the same, the present civil miscellaneous appeals are filed.

6. The learned counsel appearing for the appellant / Insurance Company submitted that the Insurance Company is not liable for the loss of injury suffered by the claimants or to indemnify the owner of the vehicle.

He would further state that the van bearing Registration No.TN-33-A-1811 involved in the accident in the present case being a goods vehicle did not have permit to carry passengers. However, the claimants were an gratuitous passengers 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. Though notice have been served upon the first respondent herein,none appeared on behalf of him. The second respondent herein remained ex-parte before the Tribunal

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on behalf of the appellant / Insurance Company and perused the materials available on record.

9. 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.

10. 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.*

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 Honble Supreme Court of India. "*

11. 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.

12. In fine, these Civil Miscellaneous Appeals are allowed and the liability of the Insurance Company to pay and recover the compensation alone is set aside. The quantum of compensation awarded by the Tribunal is affirmed and there will be an award only against the owner of the vehicle, i.e., first respondent therein. The claimants are at liberty to withdraw the amount of compensation if any deposited before the Tribunal after filing appropriate petition before the Tribunal. No cots. Consequently, connected miscellaneous petitions are closed.

30.10.2023

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

vji

To

1. The Motor Accidents Claims Tribunal,
   Principal Subordinate Judge,
   Salem.

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

M.DHANDAPANI, J.

vji

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