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C.M.A.No.2174 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2174 of 2019

1.Annammal
2.Sivalingam

... Appellants

Vs.

1.R.M.Devi
2.E.Sampath

3.The Manager,
United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai – 600 002.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2009 made in M.C.O.P.No.155 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Court), Thiruvallur.

For Appellants : Mr.V.K.Rajagopalan
For Respondents : R1 – No Appearance
R2 – Died (Steps Due)
Mr.C.Paranthaman for R3

J U D G M E N T

This appeal has been filed by the appellants/ claimants



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challenging the judgment and decree dated 07.01.2009 made in M.C.O.P.No.155 of 2006 by the Motor Accidents Claims Tribunal (Sub Court), Thiruvallur.

2.The brief facts of the case is that on 07.02.2006 at about 20.00 hours the deceased Thangaraj was working as a cleaner and was travelling in the lorry bearing Registration No.TN – 01 – 2885 owned by the respondents 1 and 2 and insured with the third respondent from Vandavasi towards Uttiramurur near Vayalure Joint Road. At that time, the driver of the vehicle drove the vehicle in a rash and negligent manner and hit against a motor cycle bearing Registration No.TN – 07– E – 7316, which was coming in the opposite direction, due to which, the lorry capsized and the deceased Thangaraj sustained fatal injuries and was taken to Government General Hospital, Chennai, however, he died on 11.02.2006.

3.Thereafter, the parents of the deceased Thangaraj/ appellants/ claimants filed claim petition in M.C.O.P.No.155 of 2006 before the Motor Accidents Claims Tribunal, claiming a sum of Rs.5Lakhs as compensation for the death of their son. After adjudication, the Tribunal awarded a sum of Rs.4,14,000/- along with



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interest at the rate of 7.5% per annum from the date of petition till the date of deposit with costs as compensation and directed the first respondent to deposit the compensation. Aggrieved by the same, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants submitted that the deceased was employed as cleaner in the lorry bearing Registration No.TN – 01 – 2885. On 07.02.2006, the driver of the vehicle cautiously drove the vehicle and on seeing the two wheeler coming from the opposite direction, the driver applied sudden brake, due to which, the lorry capsized, however, the Tribunal fastened the liability as against the owner of the vehicle and discharged the Insurance Company, which is not sustainable one.

5.The learned counsel appearing for the third respondent Insurance Company submitted that around 50 persons including the deceased un-authorisedly travelled in a goods carriage for attending marriage function. Due to the rash and negligent driving of the driver of the vehicle owned by the respondents 1 and 2, the accident happened. Further, gratuitous passengers are not entitled to claim compensation as against the Insurance Company.



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6.Heard and perused the materials available on record.

7.Admittedly, on 07.02.2006 at about 20.00 hours the deceased Thangaraj was travelling in the lorry owned by the respondents 1 and 2 and insured with the third respondent from Vandavasi towards Uttiramurur near Vayalure Joint Road. At that time, the driver of the vehicle drove the vehicle in a rash and negligent manner and hit against a motor cycle which was coming in the opposite direction, due to which, the lorry capsized and the deceased Thangaraj succumbed to injuries.

8.The issue involved in the present case was elaborately considered by the Hon'ble Division Bench of this Court in the decision reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, the relevant portion of which is extracted hereunder:

"47.However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the compensation with liberty to recover.



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Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in MANU/SC/0006/2013 : 2013 (2) SCC 41 cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.

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*



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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 MANU/SC/0021/2004 : (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in MANU/SC/0332/2018 : (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in MANU/SC/0794/2018 : 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in MANU/SC/0194/2017 : (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized*



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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*



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India."

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9.The decision of the Hon'ble Division Bench of this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, makes it clear that gratuitous passengers are not entitled for compensation as against the Insurance Company. The Tribunal after considering the factual aspects rightly fastened the liability as against the owner of the vehicle and discharged the Insurance Company, which warrants no interference.

10.The civil miscellaneous appeal stands dismissed. The judgment and decree dated 07.01.2009 made in M.C.O.P.No.155 of 2006 by the Motor Accident Claims Tribunal (Sub Court), Thiruvallur, is confirmed.

11.The first respondent is directed to deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the appellants/ claimants are permitted to withdraw the entire compensation amount with accrued interest and costs, after



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deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal.

12.The civil miscellaneous appeal is dismissed. No costs.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal (Sub Court),
Thiruvallur.



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M.DHANDAPANI,J.
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