IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:24.03.2023	Delivered on: 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2367 of 2018
&
C.M.P.No.18460 of 2018

The Branch Manager
Shriram General Insurance Co. Ltd
E-8, RICCO Industrial Area, Sitapura
Jaipur,Rajasthan State -302022 ... Appellant

Vs.

1.T.Rukhmani

2.Sathiyapriya

3.Minor Barani
represented by her next friend
Guardian Mother 1st respondent

4.Subramanian ... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 23.06.2017 made in M.C.O.P. No.471 of 2012 on the file of Motor Accidents Claims Tribunal,(III Additional District Court), Kallakurichi.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.R.Agilesh for R1 to 3

JUDGMENT

The above Civil Miscellaneous Appeal is directed against the award of Rs.8,13,000/- passed in M.C.O.P.No.471 of 2012 on the file of the Motor Accident Claims Triubnal, Kallakurichi, in and by award dated 23.06.2017 (originally filed before the Kallakurichi Sub Court in M.C.O.P.No.290 of 2011)

2. The claimants/respondents 1 to 3 herein being wife and daughters of the deceased S.Thirumurugan, sought for compensation of Rs.25,00,000/- for the fatal injuries suffered by the said Thirumurugan, husband and father respectively of the claimants, in a motor accident on 23.07.2010. It is the case of the claimants that the deceased was travelling in a mini tempo lorry and that the tempo hit a hill rock, which resulted in grievous injuries, as a result of which, the deceased was admitted to the Government hospital on

23.07.2010. However, on 25.07.2010, he died. It is the case of the claimants that the deceased was employed as a line man in the Electricity Board and was earning Rs.9,500/- per month and he was aged only 33 years at the time of accident.

3. The 2nd respondent/insurance company filed a counter denying their liability, on the main grounds that the deceased was not holding a valid driving license and that there has been breach of terms and conditions of the policy. It is also the specific case of the insurance company that the deceased was not permitted to travel in the mini tempo lorry and the permits itself was for “1 in all”. In short, the insurance company contended that the deceased was a gratuitous passenger and the factum of travelling in a mini tempo lorry was violation of the policy conditions and consequently no liability can be fastened on the insurance company.

4. Before the Tribunal, the 1st claimant, wife of the deceased was examined as P.W.1 and Exs.P1 to P.20 were marked on the side of the

claimants. On the side of the respondents, R.W1 and R.W2 were examined and Exs.R1 and R2 were marked.

5. The Tribunal after considering the over all facts and circumstances of the case, held that the insurance company was liable to pay compensation to the petitioner and recover the same from the respondent. In so far as the quantum, the Tribunal proceeded to fix the same at Rs.8,13,000/- to be payable with interest at 7.5% per annum, from the date of petition till the date of deposit.

6. Aggrieved by the award directing the insurance company to “pay and recover” the present Civil Miscellaneous Appeal has been preferred.

7. Heard Mr.S.Dhakshanamoorthy, learned counsel for the appellant and Mr.R.Agilesh, learned counsel for the respondents 1 to 3. The 4th respondent, the owner of the vehicle who was the 1st respondent before the Tribunal has remained ex-parte, despite service of notice on him in the above

proceedings.

8. The only question that needs to be decided by this Court is as to whether the insurance company is liable to pay compensation and whether the Tribunal was right in directing " pay and recover".

9. The learned counsel for the appellant placed reliance on Sec. 147 of the Motor Vehicles Act, 1988(in short 'Act'). Sec. 147 reads as under:

> *147. Requirements of policies and limits of liability. —*
> *(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—*
> *(a) is issued by a person who is an authorised insurer; and*
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—*
> *(i) against any liability which may be incurred by him in respect of the death of or bodily 27 [injury to any person, including owner of the*

goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

10. Learned counsel further contended that the deceased travelled in a goods vehicle violating the policy conditions. It is further contended that except the owner/representative of the goods carried in the vehicle no other person was covered and consequently the deceased would not be entitled to any compensation from the insurance company and can only claim compensation from the 4th respondent herein viz., owner of the vehicle/1st respondent in the M.C.O.P proceedings.

11. The Tribunal has relied upon the ratio laid down by this Court in

1) ***New India Assurance Co. Ltd Vs. A. Manoharan and Others,***

reported in ***2015 (2) TNMAC 788;***

2) ***Divisional Manager Oriental Insurance Co. Ltd Vs. Perumal and Others***, reported in ***2017 (1) TNMAC 132;***

3) ***Lakshmi Chand Vs. Reliance General Insurance***, reported in ***2016(1) TNMAC 426 (SC);***

4) ***New India Assurance Co,. Ltd Vs. Rekhaben Bharakumar Nanalal Thakkar and others***, reported in ***2016(1) TNMAC 606 (DB(Guj)***, and held that the appellant is liable to pay compensation and recover it from the 4th respondent.

12. This Court, in a later judgment in the case of ***Bharti Axa General Insurance Company Ltd, Vs. Aandi and Ors***, reported in (2018) 2 TNMAC 731 (DB), following the ratio laid down by the Hon'ble Supreme Court in ***New India Assurance Co. Ltd vs. Asha Rani***, reported in ***(2001) ACC 479 (SC)***, and ***National Insurance Co. Ltd Vs. Baljit Kaur***, reported in ***(2004) ACC 259 (SC)***, held that the insurance company cannot be directed to pay compensation, giving liberty to recover the same from the owner, in cases of

similar nature as applicable to the facts of the present case, where there was violation of policy condition and there is no coverage for the deceased who was only a gratuitous passenger.

13. It is thus seen that it is mandatory for an insurance policy to cover liabilities that are set out or envisaged U/s. 147 of the Act. However, there is no embargo for the insurer to cover a wider or bigger risk than what has been contemplated U/s.147 by paying additional premium for the same. U/s. 147, the insurance company cannot be held statutorily liable to cover cases of compensation of a gratuitous passenger in a goods vehicle. When there is no such statutory requirement to cover the liability of such a passenger in a goods vehicle, the principle of "pay and recover" cannot be made applicable and direction be issued to the insurance company to pay compensation and recover the same from the owner of the vehicle.

14. This Court, in ***Bharti Axa's*** case has noted the march of law and applied the principle laid down by the larger Bench of the Hon'ble Supreme

Court in ***New India Assurance's*** case and concluded that “pay and recover” cannot be ordered, where there is no coverage at all.

15. This Court has no difficulty whatsoever in applying the ratio laid down by the Division Bench of this Court in ***Bharti Axa's*** case(supra)to the facts of this case, which are almost identical. The finding of the Tribunal in this regard has to be necessarily be set aside.

16. In so far as the award amount of Rs.8,13,000/-, there is no challenge to the same. Therefore, this Court taking into account that the challenge to the award at the instance of the insurance company was only on the ground of their liability to “pay and recover”, no interference is warranted in so far as the quantum of compensation awarded to the claimants/respondents 1 to 3 herein. The liability to pay the compensation of Rs.8,13,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit shall be wholly on the 4^{th} respondent/owner of the vehicle and there shall be no liability cast on the appellant/insurance

company.

In the result, the Civil Miscellaneous Appeal is allowed, setting aside the award in the judgment and decree dated 23.06.2017 made in M.C.O.P. No.471 of 2012 on the file of Motor Accidents Claims Tribunal,(III Additional District Court), Kallakurichi, in so far as the appellant alone. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.03.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To

1.The Judge
Motor Accidents Claims Tribunal,
(III Additional District Court), Kallakurichi

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

P.B.BALAJI, J.,
kpr

Pre-delivery judgment in C.M.A.No.2367 of 2018

30.03.2023