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C.M.A.No.2058 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2058 of 2019

and

C.M.P.No.7491 of 2019

The Branch Manager,
The New India Assurance Co. Ltd.,
No.10-1/8-6, Prakasam High Road,
Opp. District Court, Chittoor District,
Andhra Pradesh – 517 001.

... Appellant

Vs.

1.Varalakshmi

2.Anitha

3.Minor Dwarkish

Rep. by N.F. Mother Varalakshmi

4.Sakkamma

5.Kannappa

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree passed in M.C.O.P.No.450 of 2017 on 29.06.2018 on the file of the learned Motor Accidents Claims Tribunal, Special District Court at Krishnagiri District.



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For Appellant : Mr.J.Chandran
For Respondents : Mr.S.P.Yuvaraj [R1 to R4]
No appearance [R5]

JUDGEMENT

The appellant/insurance company has challenged the award passed by the Motor Accidents Claims Tribunal, Special District Court at Krishnagiri District, in M.C.O.P.No.450 of 2017, dated 29.06.2018 on the ground of liability.

2. The facts, which is culminated in the filing of the claim petition are as follows :-

(i) On 21.09.2015 with the knowledge and direction of the 1st respondent, the deceased/Lakshmipathi and 10 others were travelling in a Hindustan TAFE Tractor – Trailer bearing Temporary Regn.No.KA-07/TQ007342/2015-16, belonging to the 1st respondent and insured with the 2nd respondent, by taking idols of 'Sallapuriamma' Temple from Ponnepalli Village to go to Chinnaganahalli Village. At about 2.30 p.m., when the tractor-trailer was proceeding on M.K.Puram to Santhipuram Road near Bendankuppam Cross, the 1st respondent drove the said vehicle



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in a rash and negligent manner, consequently, the tractor and trailer turned turtle, in which the deceased sustained fatal injuries and died on the spot. Therefore, the claimants have filed a claim petition claiming a compensation of Rs.30,00,000/- for the death of the deceased before the Tribunal.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal by its order dated 29.06.2018 awarded a sum of Rs.17,71,000/- as compensation by ordering pay and recovery. Aggrieved by the same, the insurance company has filed the present appeal before this Court.

4. The learned counsel appearing for the appellant/insurance company submitted that, the present appeal is filed only on the ground of liability. He also submitted that the carrying capacity of the tractor-trailer is only one viz., the driver, whereas about eleven persons have travelled in the above said tractor-trailer at the time of accident, which is a clear



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violation of the policy condition. Further, the deceased and the injured person have traveled as gratuitous passengers in the lorry, as the lorry is a goods vehicle which is not covered by the insurance policy and they doesn't come within the ambit of third party. Hence, the appellant/insurer is not liable to indemnify the claimants. The said issue has been elaborately considered by the Division Bench of this Court in the case of ***Bharati AXA General Insurance Co. Ltd., Vs. Aandi and others*** in CMA.Nos.1529 to 1533 of 2015.

5. Per contra, the learned counsel appearing for the respondents 1 to 4/claimants submitted that, when the accident happened solely due to the rash and negligent driving of the driver of the offending vehicle, the owner of the vehicle and the insurance company are liable to pay the compensation. Further, P.W.1 and P.W.2 eye witnesses have clearly deposed that the driver of the offending vehicle has driven the same in a rash and negligent manner and caused the said accident. Therefore, by rightly analyzing the said facts, the Tribunal has held that it is only the insurance company, who is liable to pay compensation to the LR's of the deceased and has absolved the insurance company and thereafter directed



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to recover the said compensation from the owner of the offending vehicle, which finding does not warrant interference of this Court. Accordingly, he prays for dismissal of this appeal.

6. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing for the respondents 1 to 4/claimants and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Equally, there is no dispute with regard to the fact that the above said accident happened due to the rash and negligent driving of the driver of the offending vehicle. Therefore, this Court is not entering into the said aspects. The only issue is whether the appellant/Insurance company is liable to compensate the claimants or not ?

8. There is no dispute about the fact that about 11 persons have travelled in the van which has a carrying capacity of one. The tractor-trailer was carrying idols of Sallapuramma Temple and it was accompanied by the deceased and 10 others. Therefore, by no stretch



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could it be held that the said articles were in the nature of goods and that the deceased steps into the shoes of the owner so as to bring the deceased within the ambit of a person working for hire. When the deceased had accompanied the idols, the deceased partakes the character of a gratuitous passenger and the appellant/insurance company cannot be fastened with the liability to pay compensation in respect of a gratuitous passenger.

9. The above issue has been considered by the Hon'ble Division Bench of this Court in the case of ***Bharati AXA General Insurance Co. Ltd., Vs. Aandi and others*** in CMA.Nos.1529 to 1533 of 2015, wherein this Court has held as hereunder :-

“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



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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 Hon'ble Supreme Court of India.



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52.In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.”

10. In view of the above fact, the above decision is squarely applicable to the case on the hand. Accordingly, the awards against the appellant/insurance company is set aside and if any amount deposited by the appellant/Insurance Company before the Tribunal, the Insurance Company is permitted to withdraw the same by making appropriate application before the Tribunal. However, it is open to the respondents 1 to 4/claimants to recover the said compensation from the owner of the vehicle/5th respondent herein in the manner known to law.

11. With the above observations and directions, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 29.06.2018 made in M.C.O.P.No.450 of 2017 on the file of the Motor



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Accidents Claims Tribunal, Special District Court at Krishnagiri District is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

- 1.The Motor Accidents Claims Tribunal, Special District Court at Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

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