IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :28.12.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2899 of 2019
and
C.M.P.No.15369 of 2019

The Branch Manager,
M/s. The New India Assurance
Company Limited,
Cuddalore. ... Appellant

vs.

Kuppayi (Died)

1. T.Thangarasu

2.T.Rajkumar

3.Minor.Lakshmi Devi
Rep. By her next friend and brother
T.Thangarasu

4.T.Kala

5.G.Sengalvarayan

6.Uma Devi

7.Latha ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.08.2017 made in M.C.O.P.No.1361 of 2012 on the file of the Motor Accidents Claims Tribunal / I Additional District Court, Cuddalore.

For Appellants : Mr.J.Michal Visuvasam

For Respondents : No Appearance

JUDGMENT

Challenge is made against the judgment and decree passed in MCOP.No.1361 of 2012 dated 28.08.2017 on the file of Motor Accident Claims Tribunal / I Additional District Court, Cuddalore by the second respondent/Insurance company questioning the liability.

2. The claim petition was filed by the legal heirs of deceased Thanikachalam under Section 166(1) of Motor Vehicles Act, 1988, claiming compensation of Rs.15 lakhs, who met with an accident on 12.01.2018.

3. The learned Tribunal, after hearing both sides and upon considering oral and documentary evidence, directed the second respondent-

Insurance Company to pay the compensation to the petitioners and to recover the same from the first respondent at a later stage. An amount of Rs.8,80,000/- was ordered to be paid as compensation with interest at 7.5 % per annum from the date of petition till the date of realization. Against which, the present appeal.

4. The learned counsel appearing for the Appellant Mr.Michael Visuvasam, strenuously contended that as per Ex.P.1 FIR, she was travelling in the tractor with her husband, who drove the vehicle. Therefore, the deceased was not working under the first respondent, the first respondent ought not to have allowed any person to travel in the tractor: Therefore, the deceased is an unauthorised passenger, and there is no policy coverage for the deceased. The Insurance company is not liable to pay compensation to the claimant herein for the death of unauthorised passenger.

5. Despite the service of notice to the respondents/claimants neither the respondents appeared in person nor through their counsel.

6. The claim petition was filed by the legal heirs of the deceased Thanikachalam, stating that on 01.03.2012 at about 5.00 p.m, when the deceased Thanikachalam, his wife, 5th claimant and her son-in-law were travelling in the first respondent tractor bearing registration No.TN 31 AA 6121 as load men along Ramapuram main road, due to the rash and negligent driving of the driver of the tractor, the deceased fell down from the tractor and he was run over by the said vehicle and died on the spot.

7. The claim was resisted by the Insurance company by contending that the first respondent ought not to have allowed persons to travel in the tractor and the driver alone is covered under the terms of the policy. The first respondent has violated the terms and conditions of the policy. As the first respondent violated the terms of the policy, the Insurance Company cannot be held liable to pay compensation.

8. Heard the arguments of the learned counsel Mr.J.Michael Visuvasam, appearing for the Insurance company and perused the available materials on record.

9. During the Trial, the 5th claimant Tmt. Kala was examined as PW.1. Ex.P1 to P6 were marked. Ex.P.5 is the copy of the Insurance policy certificate pertaining to the first respondent vehicle. On the second respondent side, Thiru.Ulaganthan, the Assistant Manager of the said Insurance company has been examined as RW1. No documents was marked on the second respondent / Insurance company side.

10. It is the evidence of PW.1 Tmt.Kala that on 01.03.2012 at about 5 p.m while she was travelling along with her husband and son-in-law in the first respondent's tractor bearing registration No.TN31AA 0121 as loadman, after finishing their sugarcane cutting work. While the tractor was proceeding along the Ramapuram main road near Janakiraman plantain field due to the rash and negligent driving of the tractor, the deceased fell down from the tractor and he was run over by the said vehicle, he succumbed to the injuries on the accident spot itself is not in dispute.

11. Whereas, it is the evidence of RW.1 that except the driver no other person is permitted to travel in the tractor.

12. As per Section 2(44) of the Motor Vehicle Act, tractor means "the motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes the road roller.

13. The pertinent question arises whether the second respondent/Insurance Company is liable to pay compensation for the legal heirs of the deceased Thanikachalam as he fell down from the tractor because of the rash and negligent driving of the driver of the tractor. From the evidence of PW.1 coupled with the details of Ex.P.1 copy of the FIR, it is clear that because of the rash and negligent driving of the driver of the tractor, the said Thanikachalam fell down from the tractor, he was ran over by the Tractor and died on the spot.

14. It is made clear that the deceased was travelling in the tractor as a loadman after completing his work. In ***National Insurance Company Ltd., v. Chinnama*** reported in ***2004(8)SCC 697***, it has been held that a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constituted or adapted for use solely for

the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but exclude a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle". A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be as has been contended by Mrs.K.Sharda Devi, the carriage of vegetables being agricultural produce would lead to ab inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

15. As per Section 2(44)tractor means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but exclude a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle". Therefore, it is made clear that the tractor shall be used for agricultural purposes. The trailer which is attached to the tractor, obviously has to be used for agricultural purposes only unless registered otherwise.

16. Copy of the R.C.book was not marked by either side before the Tribunal. It is discernible that from the evidence of PW1, the deceased was travelling in the tractor after completion of his agricultural work. The insurance policy is marked as Ex.A5, which is a package policy. As the

trailer is not a goods carriage and three persons travelled in the trailer and it is contrary to the policy conditions.

17. The Motor Vehicles Act enumerates the types of vehicles and in which the vehicle persons are permitted to travel etc. The tractor trailer means to carry the agricultural products. Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd., v. Nagammal reported in 2009 ACJ 865(Madras), was observed as follows:

> *"40. The question again was dealt with by a Full Bench of this Court in United India Insurance company Vs. Nagammal and others reported in 2009 (1) CTC 1 (Full Bench). The Full Bench after elaborate reference to the judgments of the Honble Supreme Court in New India Assurance Company Vs. Asha Rani and others reported in 2003 (2) SCC 223 (Larger Bench), New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) and National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1 concluded as follows:*

30. From a conspectus of the decisions, thus analysed, it is now apparent that before Asha Ranis case, 2003 ACJ 1 (SC) was decided, the decision in Satpal Singh's case, 2000 ACJ 1 (SC) was holding the field and such latter decision was overruled only in Asha Rani's case. Under such peculiar circumstances in Baljit Kaur's case, 2004 ACJ 428(SC), it was observed that even though the Insurance Company was not liable to pay the compensation in respect of a passenger in a goods vehicle, yet since the law was not clear before Asha Rani's case was decided, the doctrine of prospective overruling was applied and a direction was issued in the interest of justice directing the Insurance Company to satisfy the award and recover the same from the owner of the vehicle. In other words, even though the statutory provision under Section 149(4) and Section 149(5) was not applicable, the Supreme Court applied the Doctrine of ?pay and recover?. The ratio of the said decision has been applied selectively in *some of the later decisions and in some of the subsequent decisions, the doctrine of ?pay and recover? in respect of matters which are not strictly covered under Sections 149(4) and 149(5) has not been applied by the Supreme Court depending upon the facts and circumstances of a particular case.*

Therefore, it cannot be said as an inexorable principle of law that in each case where the liability is in respect of a passenger in a goods vehicle, which is not required to be covered under Section 147 of the Act, the Insurance Company would be directed to first pay the amount and thereafter recover the same from the owner and such discretion is obviously with the Court either to apply such principle or not.

31.Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions *rendered from time to time, the following pictures emerges:*

(i)The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.

(ii)Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii)Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv)Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of ?pay and recover?, as statutorily recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v)Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, 2000 ACJ 1 (SC), either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the

owner.

(vi)No such direction can be issued by any Trial Court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case, 2004 ACJ 428 (SC), merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.

(vii)Where, however, the matter has already been decided by the Trial Court before the decision in Baljit Kaur's case, 2004 ACJ 428 (SC) it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of ? pay and recover? should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may

be."

18. Therefore, it is apparent that the tractor trailer was used to carry the persons which is against the statute as mentioned supra. Therefore, the judgment and decree of the trial Court order to pay and recover stands set aside.

19. In the result, this Civil Miscellaneous Appeal is allowed and the judgment and decree dated 28.08.2017 made in M.C.O.P.No.1361 of 2012 on the file of the Motor Accidents Claims Tribunal / I Additional District Court, Cuddalore is set aside. Consequently, the 1st respondent/owner of the tractor is liable to pay compensation to the claimants. No costs. Consequently, connected civil miscellaneous petition is closed.

28.12.2023

Index : Yes/No
Speaking / Non-speaking order
drl/ssn

To:

1. The Motor Accident Claims Tribunal,
   I Additional District Court, Cuddalore.

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

R.KALAIMATHI, J.,

drl/ssn

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