BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.08.2023

Pronounced on : 12.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)Nos.119 and 120 of 2019

The Branch Manager,
New India Assurance Company Ltd.,
having its Office at
No.85-P, Market Road,
Thanjavur. ... Appellant/ 2nd Respondent in both appeals

Vs.

1. Murugeswari ... 1st Respondent/ Petitioner in CMA(MD)No.119 of 2019

1. Nagavalli ... 1st Respondent/ Petitioner in CMA(MD)No.120 of 2019

2. Kalaiyarasan ... 2nd Respondent/ 1st Respondent in both appeals

COMMON PRAYER : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 09.08.2018 passed in M.C.O.P.Nos.1269 and 1270 of 2017 before the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

(in both appeals)

For Appellant	: Mr.I.Robert Chandrakumar
For R1	: Mr.R.Maheswaran
For R2	: No appearance

COMMON JUDGMENT

These two Civil Miscellaneous Appeals are directed against the common award passed in M.C.O.P.Nos.1269 and 1270 of 2017 dated 09.08.2018 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

2. The appellant/second respondent/insurer, who was made liable to pay compensation of Rs.2,14,600/- (Rupees Two Lakhs Fourteen Thousand and Six Hundred only) with interest to the first respondent in C.M.A.(MD)No.119 of 2019/claimant and Rs.15,21,800/- (Rupees Fifteen Lakhs Twenty One Thousand and Eight Hundred only) with interest to the first respondent in C.M.A.(MD)No.120 of 2019/claimant for the disability

suffered by them, consequent to an accident occurred on 12.08.2012, challenged the liability mulcted on it.

For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 12.08.2012 at about 05.45 p.m., when the claimants travelled as load women in a TATA ACE vehicle bearing Registration No.TN-50-V-3728 and at the place near Paravakkottai Ramadoss coconut thope, the driver of the said vehicle drove the vehicle in a reverse direction in a rash and negligent manner and dashed against the coconut tree and as a result of which, the claimants have sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the TATA ACE vehicle's driver.

4. It is the further case of the claimants that the said vehicle was owned by the first respondent and the same was insured with the second respondent and that since the insurance coverage was in force, the second respondent is liable for the claim.

5. The defence of the second respondent is that the accident was not occurred due to the rash and negligent driving of the first respondent's driver, that the claimants and others travelled in the said vehicle as gratuitous passengers and unauthorized passengers, that the claimants were sitting in the backside of the vehicle by dropping their legs outside, that when the first respondent's driver drove the vehicle in reverse, he dashed against the coconut tree, that the accident was occurred only due to the carelessness on the part of the claimants and that since the first respondent has allowed to carry the passengers in the goods vehicle and thereby committed violation of the policy and permit condition, the second respondent is not liable for the claim.

6. It is pertinent to note that the second respondent has not disputed the quantum of compensation awarded at, by the Tribunal.

7. During trial, the claimants have examined themselves as P.W.2 and P.W.1 and one medical officer Dr.Jayabalan as P.W.3 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The first respondent had remained *ex parte*. The second respondent has examined its official Santhosh as R.W.1 and exhibited the insurance policy under Ex.R.1.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned common award dated 09.08.2018 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver and that the claimants had travelled in the said vehicle as load women and not as a gratuitous passengers and as such, the second respondent is liable for the claim.

9. The learned counsel appearing for the second respondent would submit that the claimants travelled in the rear side of the vehicle where there is no seating capacity, that even assuming that load woman is covered under the policy, it is only with reference to the load woman travelling in the lorry within its permitted capacity and in the permitted place, that the first respondent has not paid any premium, that the Tribunal has failed to consider that the claimants were not the employee of the first respondent, that there is no evidence to show that there were goods carried in the vehicle and that therefore, the claimants are only to be considered as gratuitous or unauthorized passengers.

10. The learned counsel appearing for the second respondent has relied on the judgment of this Court in ***Manager, IFFCO-TOKIO General Insurance Co. Ltd., Vs. Vanamayil (Deceased) and others*** reported in ***2020 (2) TN MAC 659,***

> *"MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 147(1)(b)(i) & 127 – Gratuitous Passengers/ Unauthorized Passengers in Goods Vehicle – Liability of Insurer – 28 passengers travelled in Goods Vehicle/TATA ACE Van to attend a condolence – Policy of Insurance covering only two persons viz. Driver and Representative of owner of goods carried in vehicle – Policy being a Contract, terms and conditions of Policy binding on parties to Contract – 28 persons, travelling in Goods Vehicle, held to be Gratuitous Passengers – Passenger also cannot travel in Goods Vehicle as per Section 127 – Therefore, allowing passengers to travel in Goods Vehicle amounts to Statutory provision also – In absence of Policy coverage, Insurer cannot be held liable in respect of unauthorized passengers – Such passengers cannot be considered as Third parties – Tribunal erred in directing Insurer to pay and recover – Insured/Owner alone liable to pay Compensation – Amount already deposited by Insurer permitted to be withdrawn by Insurer."*

11. The learned counsel appearing for the second respondent has also relied on the decision of this Court in ***United India Insurance Co. Ltd., Vs. Minor Santhoshkumar and others*** reported in ***2021 (2) TN MAC 336,***

> "*MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 147 – Minidoor Auto – Persons travelling in – Liability of Insurer in respect of – Legality of Order directing Insurer to pay and recover despite holding Injured Claimants as Unauthorized Passengers not covered by Policy of Insurance – Minidoor Auto, a Three-wheeler meant for carrying goods and having seating capacity of only one person – Insurance Policy covers only Third party coverage and not passengers travelling in it – Claimants, travelled as Gratuitous Passengers not covered by Policy of Insurance – Following Apex Court in Bharati Axa v. Anandi, held, Insurer liable to be exonerated from its liability to pay Compensation – Claimants at liberty to pay and recover set aside.*"

12. No about, the above two decisions are with respect to the claimants travelling in the goods vehicle as unauthorized passengers. As already pointed out, in the case on hand, it is the specific case of the claimants that they were travelling in the goods vehicle as load women.

13. No doubt, as rightly pointed out by the learned counsel appearing for the second respondent, P.W.1-claimant in C.M.A.(MD)No. 120 of 2019 in her cross-examination would say that they went to pluck the ground nuts from the field of Ramadoss and after completing their work, when they were returning, the accident was occurred. P.W.1 would also say that they went to load the plucked ground nuts. As rightly contended by the learned counsel appearing for the claimants, P.W.2-claimant in C.M.A.(MD)No.119 of 2019 in her chief examination would specifically say that while they were returning with ground nut load, the driver has suddenly driven the vehicle in reverse direction and dashed against the coconut tree and caused the accident. It is pertinent to note that during cross-examination of P.W.2, her above evidence was not at all disputed nor shaken. Except making a suggestion that herself and others were travelling as unauthorized passengers, nothing was elicited during her cross-examination.

14. It is necessary to refer the following decisions of this Court, wherein, it has been held that in case of goods vehicle holding package policy, the insurer is liable in respect of coolies/load men travelling in goods vehicle along with goods.

(i) Manjula and others Vs. M.Sakthivel and another (C.M.A(MD)No.972 of 2011 dated 08.10.2018)

"20.Considering the abovesaid arguments as well as the materials on record, it is seen that the appellants have specifically stated that the deceased Tamilselvan and others travelled in the van along with 17 bags of Tamarind. The respondents have not let in any evidence to disprove this contention. The deceased and others travelled with 17 bags of Tamarind. Therefore, they travelled with goods and not with luggage. The judgment relied on by the learned counsel for the second respondent reported in 2014 ACJ 505 does not advance the case of the second respondent but supports the case of the appellants.

21.The first respondent/owner of the vehicle or the driver of the vehicle ought to have been examined by the second respondent to show that Tamilselvan and others did not travel along with the goods. Similarly, the respondents have contended that when Tamilselvan and others got into the vehicle, already there were two persons sitting in the Cabin. The respondents have given the names of two persons, who have alleged to have travelled in the Cabin. The respondents did not let in any evidence to substantiate this contention. They have not examined any one of the persons, who was sitting in the Cabin already to substantiate their contention.

22.In view of the failure on the part of the respondents to disprove the contention of the appellants that the deceased Tamilselvan and others travelled along with the goods and the contention of the first respondent that the accident occurred due to overloading, I hold that the deceased Tamilselvan and others travelled in the vehicle along with their goods as owners and coolies.

23.The contention of the learned counsel for the appellants is that as per Section 147(1) of the Motor Vehicles Act, the owner of the goods or his representatives are covered by the Insurance Policy and no extra premium need be paid to cover owner or his authorized representatives, who travelled in the goods vehicle, has considerable force.

24.Section 147(1) of the Motor Vehicles Act was amended in the year 1994 by Act 54 of 1994, which came into effect from 14.11.1994. As per amendment to Section 147 of the Motor Vehicles Act, the owner of goods as well as his authorized representatives are covered by the policy issued by the Insurance Company. As per permit condition, only three persons can travel in the Cabin. In the present case, the respondents have not substantiated their contention that two persons were already travelling in the Cabin. As per Rule 236 of Tamil Nadu Motor Vehicles

Rules, six persons can travel in goods vehicle. The issue whether the Insurance Company is liable to pay compensation for owner of goods, who travelled in the goods vehicle along with goods, was considered by this Court in the judgments referred to above relied on by the learned counsel for the appellants.

25.In the said judgments, this Court held that as per Section 147(1) of the Motor Vehicles Act as well as IMT. 37-A, the owner or authorized representative of goods is entitled to claim compensation from the Insurance Company and the Insurance Company is liable to pay compensation. This Court, in the judgment dated 25.09.2014, made in C.M.A.No.2825 2010 referred to above, elaborately considered the scope of Rule 236 of Tamil Nadu Motor Vehicles Rules.This Court held that as per the said Rule, six persons can travel along with their goods. Once six persons are permitted to travel along with the goods as per the said Rule, some of the persons have to travel only in the backside of the vehicle as only three persons can travel in the Cabin. In view of the same, the contention of the learned counsel for the second respondent that the deceased Tamilselvan travelled in the backside of the goods vehicle as an unauthorized passenger and therefore, the second respondent Insurance

Company is not liable to pay compensation, is without merits.

26.The Tribunal has failed to consider Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules and IMT.37-A. As per the above provision, the owner of goods, even if he travels in the backside of the goods vehicle along with his goods, is entitled to claim compensation from the Insurance Company for the injuries and his legal heirs are entitled to claim compensation from the Insurance Company for the death."

(ii) Branch Manager, Reliance General Insurance Co. Ltd., Vs. Elumalai and others reported in ***2021 (1) TN MAC 492,***

"17.In the present case, it is the case of the claimants/claimant that at the time of accident, the deceased persons and injured claimant were travelling as Coolies after loading the hollow bricks, to unload the same. The 2nd respondent has not produced any materials to show that at the time of accident, the Tata Ace goods vehicle was empty and deceased persons and injured claimant were not sitting on the hollow bricks. In the written submission, the learned counsel appearing for the 2nd respondent has mentioned that Rule 236 of the Tamil Nadu Motor Vehicles

Rules prohibits the persons more than seating capacity be carried in the cabin. Rule 236 of the Tamil Nadu Motor Vehicles Rules reads as follows:

> *"236. Limit of persons in goods carriage— No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."*

18.In the judgment referred to above, this Court considered Rule 236 of the Tamil Nadu Motor Vehicles Rules and held that 6 persons can sit in the backside of the goods vehicle along with the goods.

19.In the judgment dated 09.10.2010 made in C.M.A.No.323 of 2011, relied on by the learned counsel appearing for the claimants, this Court again held that when Coolies travel along with goods to unload the goods, they travel as agent of owner and their risk is covered under

Section 147of the Motor Vehicles Act and hence, Insurance Company is liable to pay compensation.

20.The judgments relied on by the learned counsel appearing for the 2nd respondent do not advance their case as the facts of those case are entirely different to the facts of the present case.

21.The full Bench judgment of the Hon'ble Apex Court reported in 2004 (1) CTC 2010 (Bulchith Kaur's case), judgment of this Court reported in 2009 (1) CTC 1 (Nagammal's case) referred to above and the judgment dated 09.10.2010 made in C.M.A.No.323 of 2011 referred to above, relied on by the learned counsel appearing for the claimants/claimant are squarely applicable to the facts of the present case. Further, the issue whether the Insurance Company is liable to pay compensation to the owner of the goods or their agent who travel on the backside of the goods vehicle along with the goods is no longer res-integra. In the full Bench judgment of the Hon'ble Apex Court reported in 2004 (1) CTC 210 referred to above, judgment of this Court reported in 2014 (2) TNMAC 79 and the judgment dated 25.09.2014 made in C.M.A.No.2825 of 2010, it has been already decided that the Insurance Company is liable to pay compensation to the claimants as *they are covered under Section 147 of the Motor Vehicles Act and Rule 236 of the Tamil Nadu Motor Vehicle Rules.*

22.When a policy is issued by the Insurance Company as per the provisions of Section 147 of the Motor Vehicles Act, it is statutory policy and also called as Act policy. The liability of the insurer under this policy is restricted to indemnify the insured in respect of the claim made by the 3 rd parties and also owner of goods or their authorised representative who travel in the goods vehicle along with their goods. The Insurance Company is not liable to pay any other claim. At the same time, the owner of the vehicle can pay additional premium to cover the liability of its employees, workers like loadman, coolies, pillion rider in two wheeler, occupant of four wheeler, personal accident coverage for owner-cum-driver, etc. This policy is called package policy and also called contractual policy. The said Insurance Company is bound by terms of contract. In the present case, the policy issued by the 2nd respondent is package policy. R.W.1 in his evidence has admitted that the deceased persons and injured claimant travelled as Coolies. The Tribunal considering that the policy issued by the 2nd respondent is a package policy, held that 2nd respondent is liable to pay compensation. In the appeal, it is not the case of the 2nd respondent that risk of coolies is not covered by the said policy. On the other hand, it is the case of the 2nd *respondent that deceased persons and injured claimant travelled as unauthorized passengers, where there is no seating capacity. In the written statements, the 2 nd respondent has stated that the deceased persons and injured claimant after loading the hollow bricks travelled on the top of the hollow bricks to unload the same. In view of the above materials, there is no error in the award of the Tribunal, holding that the 2nd respondent is liable to pay compensation."*

15. In the case on hand, admittedly, the policy issued by the second respondent with respect to the vehicle involved in the accident is a package policy. As already pointed out, the first respondent had remained *ex parte*. The claimants have given evidence that they were travelling as load women in the said vehicle. As rightly contended by the learned counsel appearing for the claimants, the second respondent has not taken any steps to examine the driver of the vehicle to show that the claimants did not travel along with goods. Except examining their official, the second respondent has not chosen to examine any other witness to prove their defence.

16. Considering the facts that the claimants had travelled in the said vehicle as load women and that the policy is a package policy and taking note of the legal position above referred, the finding of the Tribunal that the second respondent is liable for the claim cannot be found fault with. The learned counsel appearing for the second respondent has not raised any other ground to impugned the common award. As already pointed out, the second respondent has not disputed the quantum of compensation awarded at, by the Tribunal. Considering the above, this Court concludes that the appeals are devoid of merits and the same are liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

17. In the result, these Civil Miscellaneous Appeals are dismissed and the common award dated 09.08.2018 passed in M.C.O.P.Nos.1269 and 1270 of 2017 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, is confirmed. The appellant/insurer is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not

already deposited. On such deposit being made, the first respondent in both appeals/claimants are permitted to withdraw their shares together with interest and costs. Parties are directed to bear their own costs.

12.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
   Special District Court, Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in
C.M.A.(MD)Nos.119 and 120 of 2019

Dated : 12.09.2023