BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.03.2023

PRONOUNCED ON : 23 .03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.670 & 671 of 2019

CMA(MD).No. 670 of 2019

1.R.Nagarani

2.Vetrivel

3.Minor Thangavel

4.T.Bose

5.Petchiammal ....Appellants

(Minor 3rd Petitioner is represented by
her mother and next friend-R.Nagarani)

Vs.

1.Muthukrishnan

2..Reliance General Insurance
Through its Manager
No.23, Spur Tank Road
Chetpet, Chennai 31 ...Respondents

CMA(MD).No. 671 of 2019

1.R.Ramalakshmi

2.Sivasankari

3.R.Abirami ... Appellants

vs.

1.Muthukrishnan

2.Reliance General Insurance
Through its Manager
No.23, Spur Tank Road
Chetpet, Chennai 31 ...Respondents

COMMON PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeals and modify the award passed in M.C.O.P.Nos.242 & 640 of 2009 dated 27.06.2017 on the file of the Motor Accident Claims Tribunal/Sessions Judge Communal Clash Cases Court, Madurai and fix the liability on the respondents as the respondents are jointly and severally liable to pay the compensation amount payable to the appellants.

(In both the appeals)

For Appellants	: Mr.R.Aravindan
For R1	: No appearance
For R2	: Mr.V.Sakthivel

COMMON JUDGMENT

These two appeals have been preferred by the claimants challenging the common award of the Tribunal in M.C.O.P.Nos.242 of 2009 and 640 of 2009 on the file of the Motor Accident Claims Tribunal, Madurai wherein the Tribunal had dismissed the claim petitions as against the Insurance Company.

2.The claimants in both the claim petitions are the legal heirs of one Ramasamy and one Ramakrishnan who had travelled on the back side of a goods vehicle for the purpose of loading and un-loading purposes. According to the claimants, the deceased persons were Carpenters by profession and they had travelled on the back side of the vehicle along with finished wooden items and kadappa stones as per the direction of the owner of the goods vehicle who had hired the vehicle at the relevant time of accident. According to the claimants, the vehicle was driven from Thiruparankundram to Tenkasi. While the vehicle was nearing Puliankudi, the driver of the first respondent, had driven the said vehicle in a rash and negligent manner and he had lost the control of the vehicle. Suddenly, he applied brake and therefore, the kadappa stones which were carried in the vehicle, hit the deceased on his forehead and thereby, caused deep cut injury. The deceased was taken to the nearby Hospital where he was declared dead. The deceased being a Carpenter by profession was earning a sum of Rs.9,000/- and a claim was made for a sum of Rs.10 lakhs in each one of the claim petition.

3.The owner of the vehicle had remained exparte and the Insurance Company had filed a counter in both the claim petitions contending that the deceased persons were not travelling as load man in the said vehicle. They were travelling only as un-authorized passengers/gratuitous passengers in the goods vehicle and therefore, the Company is not liable to pay any compensation for the death of the said persons. The Insurance Company also disputed the quantum of compensation as prayed for in the claim petitions.

4.The Tribunal after considering the oral and documentary evidence, arrived at a conclusion that the driver of the vehicle alone had driven the same in a rash and negligent manner at a high speed and when he applied brake, the deceased persons along with kadappa stones have fallen down from the vehicle which resulted in the accident. The Tribunal relied upon the F.I.R lodged by one co-passengers of the vehicle which was marked as Exhibit P1 and the said informant was also examined as PW2.

5.The Tribunal further found that the cases projected by the claimants in their claim petitions that the deceased persons were load men was not supported by their own evidence. The claimants have deposed that the deceased persons were not load men. Based upon the depositions of PW1 and PW3, the Tribunal arrived at a finding that the deceased persons were not load men but gratuitous passengers travelling in a goods vehicle. The deceased persons have not travelled in the cabin, but they have travelled only on the top of the goods vehicle and therefore, they cannot have been considered to be covered by the policy as owners or representatives of the goods. The Tribunal proceeded to fix the compensation at Rs.10,36,000/- in MCOP.No.242 of 2009 and a sum of Rs.8,80,120/- in MCOP.No.640 of 2009. Since the Tribunal arrived at a finding that the deceased persons have travelled in the goods vehicle as gratuitous passengers, the Tribunal dismissed the claim petitions as against the Insurance Company and had passed an award as against the owner of the vehicle.

6.The present appeals have been filed by the claimants seeking to shift the liability upon the Insurance Company.

7.The learned counsel for the appellants had contended that the deceased persons have travelled in the goods vehicle along with finished wood work and kadappa stones from Thiruparankundram to Tenkasi in order to carry out the loading and unloading operations at the instance of the owner of the goods. Therefore, they could either be considered to be the load men or they could be considered to be authorized representatives of the owner of the goods. Viewed from any angle, they are entitled to be reimbursed by the Insurance Company.

8.The learned counsel appearing for the appellants had relied upon the Hon'ble Full Bench Judgement of Karnataka High Court ***in M.F.A No.30131 of 2010 (New India Assurance Co., Ltd., Vs. Yallavva and***

another) dated 12.05.2020 to contend that even in cases where there is a fundamental breach of policy condition, the Insurance Company may be directed to pay and thereafter, recover the same from the owner of the vehicle. In the present case, there is no violation of policy condition in view of the fact that the deceased persons have travelled either as load men or as representatives of the owner of the goods. Therefore, he prayed for allowing the appeals and fix the liability as joint and several liability on the owner of the vehicle and the Insurance Company.

9.Per contra, the learned counsel appearing for the respondent Insurance Company had contended that though the claimants have pleaded that the deceased persons had travelled in the goods vehicle as load men, at the time of deposition the said case was given up and they have contended that the deceased persons were only Carpenters. Therefore, the contention that the deceased persons were load men and they have accompanied with the finished goods for the purposes of loading and unloading activities has not been proved. He had further contended that the claimants have not disclosed who is the owner of the goods and on whose behalf the deceased persons were travelling in the goods vehicle. He had further contended that even assuming without admitting the deceased persons were the owners of the goods, unless they have travelled in the cabin of the goods vehicle, they cannot be covered by the policy of Insurance. Admittedly, the deceased persons have travelled on the top of the vehicle and not in the cabin.

10.The learned counsel for the respondents had relied upon the Judgement of the Hon'ble Supreme Court reported in ***(2008) 1 SCC 423 (National Insurance Co.Ltd., Vs. Cholleti Bharatamma and others)*** to contend that the owner of the goods means only the person who travels in the cabin of the vehicle and it is always restricted to only one person. In the present case, two persons are said to have travelled not in the cabin, but on the top of the vehicle.

11.The learned counsel for the respondent/Insurance Company had also relied upon the Hon'ble Division Bench Judgment of our High Court reported in ***2018 (2) TN MAC 731 (DB) (Bharati AXA General Insurance Co., Ltd., Vs. Aandi and others)***. Hence, he prayed for dismissal of the appeal.

12.I have considered the submissions made on either side and perused the materials available on record.

13.As per averment in the claim petitions, the deceased persons have travelled on the top of the goods vehicle and not in the cabin. It is averred in the claim petitions that the deceased persons have travelled as load men for loading and unloading at the instance of the owner of the goods. However, at the time of deposition, the claimants have stated that the deceased persons were not load men by profession, but they were Carpenters. Therefore, the stand taken by the claimants in their claim petitions has been withdrawn at the time of deposition.

14.The claimants have attempted to develop their claims that they have travelled in the said vehicle as representatives of the owner of the goods at the time of their argument. However, the name of the owner of the goods has not been disclosed either in the claim petitions or in the deposition. Even assuming that the deceased persons were representatives of the owner of the goods, in view of the Judgment of the Hon'ble Supreme Court reported in ***(2008) 1 SCC 423 (National***

Insurance Co.Ltd., Vs. Cholleti Bharatamma and others), they could be covered under the policy only if they have travelled by sitting inside the cabin. However, in the present case, they have travelled on the top of the goods vehicle. Therefore, even if they are load men or representatives of the owner of the goods, they will not be covered by the policy of insurance.

15.The learned counsel for the appellants had relied upon a Judgment of our High Court reported ***in 2017 (4) ALL MR (JOURNAL) 40 (M/s.New India Assurance Company Ltd., Vs. Thiru.Murugan & others)*** to contend that the persons who have travelled in the goods vehicle should be treated as a third party and they are entitled to receive compensation from the Insurance Company. The policy being a package policy, the third parties who have travelled on the goods vehicle are liable to receive compensation from the Insurance Company. However, in view of the Judgement of the Hon'ble Supreme Court reported ***in 2018 2 TN MAC 273 (SC) (Shivaraj Vs. Rajendra and another)*** wherein the Hon'ble Supreme Court has held that the Insurance Company is not liable for the loss or injury suffered by the un-authorised passengers in a goods vehicle. Therefore, this Court is not inclined to rely upon the Judgment referred to by the learned counsel for the appellants cited supra.

16.The learned counsel for the appellants had contended that even in cases of fundamental breach, the principal of pay and recovery could be resorted to. However, the learned counsel for the Insurance Company has pointed out the Division Bench Judgement of our High Court reported in ***2018 (2) TN MAC 731 (DB) (Bharati AXA General Insurance Co., Ltd., Vs. Aandi and others)*** wherein the Hon'ble Division Bench was pleased to hold that when there is no statutory requirement to cover the liability in respect of the passengers in a goods vehicle and therefore, the principles of pay and recovery as statutorily recognized in Sections 149(4) and 149(5) of the Motor Vehicles Act 1988 is not applicable *ipso facto* to such cases and therefore, the Court had refused to issue a direction to the Insurance Company to pay to the claimants and thereafter, recover the same from the owner. When the claimants have not established that the deceased persons were travelling in the goods vehicle either as a load men or as representatives of the owner of the goods, the only inference that could be drawn is that they have travelled as un-authorized passengers/gratuitous passengers in the goods vehicle. The Tribunal has rightly treated the deceased persons as gratuitous passengers and exonerated the Insurance Company and fixed the liability upon the owner of the vehicle.

17.In view of the above said discussions, there are no merit in the appeals and the both appeals stand dismissed. No costs.

23.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Motor Accident Claims Tribunal
/Sessions Judge Communal Clash Cases Court,
Madurai

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)Nos.670 & 671 of 2019

23.03.2023