BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.09.2023

PRONOUNCED ON:10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.715 of 2019
and
C.M.P.(MD)Nos.8971 of 2019 and 629 of 2023

The Oriental Insurance Company Ltd.,
through its Branch Manager,
Sree Vijay Complex,
1024B, Cumbum Road,
Opp. Bus stand,
Theni – 625 531. : Appellant/2nd Respondent

Vs.

1. S.Gomathi
2. S.Alagu Muthu : Respondents 1& 2 / Petitioners 1 & 2

3. A.Selvaraj : 3rd Respondent/ 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree made in M.C.O.P.No.321 of 2015, dated 01.03.2019, in the Court of the Principal District Judge, Motor Vehicle Accidents Claims Tribunal, Thoothukudi.

For Appellant : Mr.C.Karthik

For Respondents :Mr.P.Subbiah
for R.1 and R.2
: R.3 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.321 of 2015, dated 01.03.2019, on the file of the Motor Accident Claims Tribunal / Principal District Court, Thoothukudi.

2. The appellant/Insurer who was made liable to pay compensation of Rs.6,45,964/- with interest at 7.5% p.a., to the respondents 1 and 2/claimants for the death of Sri Raman consequent to an accident occurred on 27.03.2014, challenged the liability mulcted on it.

3. The case of the claimants is that on 27.03.2014 at about 15.00 hours, the deceased was travelling in a tractor bearing Registration No.TN-72-F-9708 for loading the wooden sticks for the purpose of

giving stand to banana trees in the agriculture field at Mela Authoor Road, near Shanmugasundara Nadar school from West to East on the extreme left side of the road, the driver of the tractor drove the vehicle in a rash and negligent manner at the speed breaker and as a result of which, the deceased was thrown away from the tractor and had fallen down on the road, that the said Sri Raman sustained serious head injuries and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the tractor driver.

4. The defence of the respondent / Insurer is that the deceased was a gratuitous pasenger in the tractor, that the first respondent – owner or his driver has no power to allow any passenger to travel in the tractor and as such, they have violated the terms and conditions of the policy and that therefore, the Insurer is not liable for the claim.

5. During the trial, the claimants examined the first claimant as P.W.1 and two other witnesses as P.W.2 and P.W.3 and exhibited ten documents as Exs.P.1 to P.10. The first respondent had remained exparte. The second respondent – Insurer examined its Executive Officer as R.W.1 and exhibited one document as Ex.R.1. A witness document came

to be exhibited as Ex.X.1, through P.W.2. The learned trial Jude, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 01.03.2019 by holding that the accident was occurred only due to the rash and negligent driving of the tractor driver, mulcted liability on the second respondent / Insurer and directed them to pay compensation of Rs.6,45,964/- with interest and costs. Aggrieved by the impugned award, the second respondent/Insurer has preferred the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellant/Insurer would submit that the sitting capacity of the tractor is only one, that the Insurance Policy shows that it is a Miscellaneous class D Vehicles liability only policy and it covers both tractor and trailer and that since the load man is not permissible in a tractor, the Insurer cannot be held liable to indemnify the owner. The learned Counsel would further submit that the exclusive vicarious liability of the owner of the tractor cannot be allowed to be escaped in view of the fact that such liability cannot be fastened with the insurer in any manner, that the F.I.R., discloses that when the deceased was getting down from the mudguard of the tractor, the tractor driver

drove the vehicle rashly and negligently and as a result of which, the deceased fell down and died, that the tractor was to be used only for agricultural purpose and not for carrying any passenger and that therefore, the order of the Tribunal mulcting the entire liability on the appellant/Insurer is liable to be set aside.

7. The only and the main point that arises in the appeal for consideration is as to whether the Insurer is liable to pay the compensation to the claimants for the death of the said Sri Ram who had travelled in the tractor?

8. It is necessary to refer the unreported judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co., Ltd., Vs.Natthi Bai and others in SLP(C) No.3500/2006***, wherein the Hon'ble Apex Court while setting aside the judgment of the High Court awarding compensation to the passenger travelled in the tractor has observed as follows:

> *"question in regard to liability of the Insurance Company, vis-a-vis, the passenger travelling in a Tractor which is not used for agriculture purpose came up for consideration*

before this Court in National Insurance Co. Ltd., Vs. Chinnamma & Ors, 2004(8) SCC 697, wherein it was categorically held as under:

"14. An insurance for an owner of the goods or his authorized representative travelling in a vehicle became compulsory only with effect from 14.11.1994, i.e., from the date of coming into force of Amending Act 54 of 1994."

The said legal principle is reiterated in relation to gratuitous passenger in National Insurance Co. Ltd., V. Bommithi Suuhayamma & Ors., 2005(12) SCC 243. Yet again in New India Assurance Co. Ltd., V. Vedwati & Ors., 2007(3) SCALE 397, a Division Bench of this Court has clearly held that the liability of the Insurer would be limited to a third party and not to a gratuitous passanger.

Mr.Praksh Shrivastava, learned Counsel appearing for the Respondent, however, submits that the Insurance Policy would show that one passenger could travel in a Tractor. The passenger referred to in the Insurance Cover evidently would mean the driver of the Tractor and not any passenger who can travel on the mudguard of the Tractor. There would not be any seat for a passenger on the Tractor, which was to be used for agricultural purpose."

9. Recently the Hon'ble Division Bench of this Court in ***United India Insurance Company Vs. Lakshmamma and Others*** (passed in C.M.A.No.496 of 2021, dated 03.08.2023) relied on the Full Bench judgment of the Karnataka High Court in ***Gandhilingappa @ Gandhilinga and another Vs. K.Guleppa and Others*** reported in ***(2021)2 TN MAC,*** has held as follows:

> *"12.Mr.S.Arunkumar, learned counsel would also invite our attention to the judgment of the Full Bench of the Karnataka High Court in Gandhilingappa @ Gandhilinga and Another Vs. K.Guleppa and Others reported in (2021) 2 TN MAC 116 wherein, the Full Bench has framed the following points for determination:- "i) Whether a person travelling on a mud-guard of a tractor can be construed as an authorized passenger or an unauthorized passenger and liability of such person is covered or not? ii) Whether the persons who are working either on the ploughing or crushing machines attached to the tractor can be construed as employees so as to cover their risk statutorily under Section 147 of MV Act though there is only one seating capacity in the tractor apart from the driver ? iii) Whether the crushing machine or ploughing machine or any other instrument attached to the tractor can be considered to ba an attachment to the tractor so as to cover the risk of the insured in respect of employees and the policy taken in respect of the tractor*

alone ?" 13.The Full Bench of the Karnataka High Court answered the Question No.1 in terms of paragraph 23 of the said judgment, which reads as follows:- "23. The Apex Court has reiterated that a tractor could lawfully accommodate only one person, namely, the driver. The Apex Court categorically held that the appellant in the said case had travelled in the tractor as a passenger even though the tractor could accommodate only one person namely the driver. It was categorically held that the insurer was not liable to indemnify the owner of the tractor for the liability of a passenger travelling on the tractor. Hence, in view of the dictum of the Apex Court referred above, the liability of a person sitting on the mud-guard of a tractor is not required to be covered by statutory insurance policy, as contemplated by sub-section (1) of Section 147 of the M.V.Act."

16.We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle. Rule 28 of the Central Motor Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mudguard of the Tractor. When there is a statutory violation that persons, who travels in the mud-guard is unauthorized passenger, we cannot burden the

Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailor shows that it is an agriculture vehicle. The facts revealed that it was used for non agricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability."

10. As rightly pointed out by the learned Counsel for the appellant, in the F.I.R., it has been stated that the tractor driver drove the vehicle in a rash and negligent manner and while moving in the speed breaker, Sri Raman who was travelling along with the driver has fallen down and sustained injuries and died on the spot. As already pointed out, the claimants, even in their claim petition, have specifically stated that the deceased was travelling in a tractor and when the tractor was proceeding in Mela Authoor road, near Shanmugasundara Nadar School from West to East, its driver drove the vehicle in a rash and negligent manner at the speed breaker and as a result of which, the deceased was thrown away from the tractor. P.W.2 alleged to be the occurrence witness would say

that the deceased was travelling in the tractor and when the tractor was taken in the speed breaker in a rash and negligent manner, the deceased fell down from the tractor and in cross-examination, he would reiterate that the deceased who was sitting near the tractor driver has fallen down and died on the spot. It is evident from Ex.B.3 – Registration Certificate of the tractor involved in the accident that the seating capacity has been shown as one person.

11. Considering the evidence available on record, it is clearly evident that the deceased Sri Raman was travelling in the tractor and at the time of accident, he has fallen down from the tractor and sustained injuries. Considering the above and the legal position above referred, the deceased has to be considered as gratuitous passenger in the tractor and as such, the Insurer is not liable for the claim. Hence, the Tribunal, without considering the above legal aspect in proper perspective, has mechanically mulcted the entire liability on the Insurer and moreover as per the dictum laid down by the Hon'ble Supreme Court, the question of invoking the doctrine of pay and recovery does not arise at all. Consequently, this Court concludes that the impugned order mulcting the liability on the appellant/Insurer is liable to be set aside and is set aside.

Considering the facts and circumstances of the case, the parties are to be directed to bear their own costs and the above point is answered accordingly.

12. In the result, the Civil Miscellaneous Appeal is allowed and the impugned award passed in M.C.O.P.No.321 of 2015, dated 01.03.2019 on the file of the Motor Accident Claims Tribunal/Principal District Court, Thoothukudi, is set aside. The appellant-Insurer is permitted to withdraw the award amount already deposited, if any. The claimants can work out their remedy as against the owner of the vehicle to recover the amount. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

10.11.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL
To
1.The Motor Accident Claims Tribunal/
The Principal District Court, Thoothukudi,

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

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.715 of 2019

10.11.2023