BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2023

Pronounced on : 31.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.173 of 2020
and
C.M.P.(MD)No.2963 of 2020

United India Insurance Co. Ltd.,
represented by its Divisional Manager,
Opp. To Railway Station,
Madurai,
Madurai District. ... Appellant

Vs.

1. Mookkammal

2. Aadhali Chinnan

3. Lakshmi

4. Murugan

5. K.Ramu

6. Manoharan

7. State Express Transport Corporation,
   through its Additional Director,
   Thiruvalluvar Veedu,
   Pallavaram Salai, Chennai. ... Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 02.07.2019 made in M.C.O.P.No.1512 of 2015 on the file of VI Additional District Judge, Madurai.

For Appellant	: Mr.A.Ilango
For R1 to R4	: Mr.K.C.Ramalingam
For R5	: No appearance
For R6	: Mr.M.Ganesan
For R7	: Mr.P.M.Vishnuvardhanan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1512 of 2015 dated 02.07.2019 on the file of the Motor Accident Claims Tribunal/6th Additional District Court, Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.8,78,400/- (Rupees Eight Lakhs Seventy Eight Thousand and Four Hundred only) with interest at 7.5% per annum to the respondents 1 to 4/claimants for the death of Pandi, consequent to an accident occurred on 28.03.2015, challenged the liability mulcted on it.

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

3. The case of the claimants is that on 28.03.2015 at about 01.00 hours, the deceased Pandi and others had taken ground nut bags in a PIAGGIO goods auto bearing Registration No.TN-43-C-9178 and in Mattuthavani bus stand, 8th platform near Corporation toilet, the goods vehicle driver suddenly dashed against a SETC bus bearing Registration No.TN-01-AN-0281 and as a result of which, the goods vehicle got capsized, that the said Pandi suffered grievous injuries in spinal cord and other parts of the body and he was immediately taken in 108 Ambulance and was admitted in Government Rajaji Hospital, Madurai and subsequently, he was shifted to Ragavendar Hospital, Madurai and again to Government Rajaji Hospital, Madurai, that despite treatment, he succumbed to the injuries on 03.04.2015 and that a case came to be registered in Crime No.45 of 2015 for the offences under Sections 279, 337 and 304(A) IPC against the goods vehicle driver.

4. The defence of the second respondent is that the vehicle involved in the accident is a goods vehicle with a seating capacity of just one

person, who is the driver of the vehicle, that the vehicle is intended to carry only goods and there is no provision to carry any person other than the driver, that three persons including the deceased Pandi apart from the driver were travelling in the vehicle by sitting on the top of the goods loaded in the rear portion of the vehicle, that the risk in respect of such persons is not required to be covered under the policy of insurance and the risk in respect of the deceased Pandi has not been covered under the policy of insurance, that the driver of the goods vehicle was not responsible for the accident and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. During trial, the claimants have examined the fourth claimant Murugan as P.W.1 and one Raju as P.W.2 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The respondents 1 and 3 had remained *ex parte*. The second respondent has examined its official as R.W.1 and exhibited 2 documents as Ex.R.1 and Ex.R.2 and the fourth respondent has examined its conductor of the bus as R.W.2.

6. 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 award dated 02.07.2019, by holding that the accident was occurred only due to the negligence on the part of the first respondent's driver and mulcted liability on the second respondent and directed them to pay compensation of Rs.8,78,400/- with interest and costs. Aggrieved by the impugned award, the second respondent has preferred the present appeal.

7. It is pertinent to note that the second respondent has not challenged the finding of the Tribunal that the accident was occurred only due to the negligence of the driver of the goods vehicle. It is not in dispute that the goods vehicle was insured with the second respondent at the time of accident.

8. The learned counsel appearing for the second respondent would submit that one Raju, who was the first informant to the police about the accident occurred on 28.03.2015, has hired the insured vehicle for carrying ground-nuts and when he along with two persons including the deceased Pandi were travelling as load men in the said vehicle, were said to have met with the accident and the same was not considered by the

Tribunal, that the Tribunal has failed to consider that the deceased Pandi was a load man engaged by the said Raju, who hired the insured vehicle, that the Tribunal has also failed to take notice of the fact that the second respondent if it all has any contractual liability, it is only to the owner of the vehicle, that as per the registration certificate of the insured vehicle, the seating capacity is only one i.e., for the driver of the vehicle, that the insured vehicle at the time of accident has entered into the bus stand in the way the buses were supposed to come out from the bus stand violating the traffic rules and thereby invited the accident by hitting against the bus inside the bus stand and that therefore, the impugned award is liable to be set aside.

9. The learned counsel appearing for the second respondent has relied on the judgments of the Hon'ble Supreme Court in ***Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd. and others*** reported in ***2013 ACJ 1*** and the Division Bench of this Court in ***Bharati AXA General Insurance Co. Ltd. Vs. Aandi and others*** reported in ***2018 (2) TN MAC 731***. In the first decision case, the insurance policy taken therein was Act Policy only which covers the employees of the insured and the second

decision case relates to permitting unauthorized passengers/gratuitous passengers in the goods vehicle. In the case on hand, it is the specific contention of the claimants that the deceased Pandi and two others were travelling in the goods vehicle along with their ground nut bags. In Ex.P.1-FIR, which came to be registered on the basis of the complaint lodged by one of the three persons, who travelled in the goods vehicle, wherein, he has stated that all the three persons were doing business by taking ground-nuts from whole sale market and selling at Mattuthavani bus stand, that on 28.03.2015 at about 01.00 a.m., after purchasing 8 bags of ground nut had hired a load auto for taking the bags to the Mattuthavani bus stand and that while they were travelling in the goods vehicle along with their ground nut bags, the accident had occurred. The defacto complainant, while deposing as P.W.2, has reiterated the above version. In cross-examination, P.W.2 would say that himself and two others had travelled on the back side of the goods vehicle sitting on the ground-nut bags. According to the claimants, the deceased Pandi and two others had travelled in the goods vehicle as owners of the goods along with the goods.

10. It is necessary to refer the judgment of this Court in ***Manjula and others Vs. M.Sakthivel and another (C.M.A(MD)No.972 of 2011***

dated 08.10.2018), wherein, it has been held that as per Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules, 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 and the relevant passages are extracted hereunder:-

> *"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."

11. It is also necessary to refer the judgment of this Court in ***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."

12. In the present case, admittedly, the policy issued by the second respondent with respect to the vehicle involved in the accident is a package policy. Admittedly, the owner of the goods vehicle had remained *ex parte*. As already pointed out, the claimants' side have given evidence that the deceased Pandi, P.W.2 and another were travelling as owners of

the goods 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 goods vehicle to show that the deceased Pandi did not travel along with the goods. Except examining their official as R.W.1, the second respondent has not chosen to examine any other witness to prove their defence.

13. Even assuming for arguments sake that the deceased Pandi travelled in the goods vehicle as a load man, considering the fact that the policy is a package policy and taking note of the legal position above referred, even then the second respondent is liable for the claim. But in the case on hand, as already pointed out, the deceased Pandi travelled in the said vehicle as owner of the goods along with the goods. Considering the above facts and circumstances and also 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 second respondent has not raised any other ground to impugned the award. Moreover, the second respondent has not challenged or disputed the quantum of compensation awarded at, by the Tribunal. Hence, this Court concludes that the appeal is devoid of merit and the same is liable to be dismissed.

14. 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.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the impugned award dated 02.07.2019 passed in M.C.O.P.No.1512 of 2015 on the file of the Motor Accident Claims Tribunal/6th Additional District Court, Madurai, 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 respondents 1 to 4/ claimants are permitted to withdraw their shares together with interest and costs as apportioned by the Tribunal, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

31.10.2023

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

K.MURALI SHANKAR,J.

csm

To:

1. The Motor Accident Claims Tribunal/
   6th Additional District Court, Madurai.

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

Pre-Delivery Order made in
C.M.A.(MD)No.173 of 2020
and
C.M.P.(MD)No.2963 of 2020

Dated : 31.10.2023