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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1405 of 2024
and
CMP No.12341 of 2024

Cholamandalam MS General Insurance Company Limited,
Situated at Rajaji Road, Perumannur,
Salem - 7. ... Appellant

Vs.

1.Sinuvasan

2.Kolanji

3.Selvarani

4.Manikkam ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 15.06.2022 passed in M.C.O.P. 443 of 2017 on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant	: Ms.R.Sreevidhya
For RR1 and 2	: Mr.Amar D.Pandiya
R3 and R4	: No appearance

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JUDGMENT

The appellant is the Cholamandalam MS General Insurance Company Limited, Salem and they have filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 questioning their liability to pay compensation amount to the claimants.

2. The respondents 1 to 3 / claimants filed a claim petition in M.C.O.P.443/2017 on the file of the Motor Vehicle Accidents Claims Tribunal, Kallakurichi, under Section 166 of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the death of their mother Vijaya, in a road accident that took place on 01.11.2017.

3. The brief case of the claimants is as follows.

On 01.11.2017, Vijaya (since deceased) was travelling in a Tata Ace Vehicle bearing Registration Number TN-30-BW-4785 on Salem – Chennai National Highways. The driver of the Tata Ace drove the vehicle in a rash and negligent manner, as a result of which, the vehicle capsized and Vijaya sustained severe injuries all over her body and died on the spot.

4. According to the claimants, the rash and negligent driving of the

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driver of the Tata Ace belonging to the fourth respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the Cholamandalam MS General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the Tata Ace remained absent and was set *ex parte*. The appellant Insurance company resisted the claim petition by filing a counter affidavit before the tribunal.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the Tata Ace and directed the appellant Insurance Company to pay compensation of Rs.3,55,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation in the first instance and then recover the same from the owner of the vehicle, vide its orders dated 15.06.2022.

7. Aggrieved over the orders passed by the Tribunal, the Cholamandalam MS General Insurance Company Limited has filed the present

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appeal contending that since the deceased was a gratuitous passenger, the Insurance Company is not liable to pay any compensation to the claimants.

8. Heard Ms.R.Sreevidhya, learned counsel appearing for the appellant and Mr.Amar D.Pandiya, learned counsel appearing for the respondents 1 and 2.

9. Ms.R.Sreevidhya, learned counsel appearing for the appellant relied on the decision in ***National Insurance Company Limited Vs. V.Chinnamma and others reported in 2004(4) CTC 459*** and contended that since the vehicle was not used for agricultural purpose, the appellant, Insurance Company is not liable to pay any compensation to the claimants. She further contended that since the deceased was travelling in the vehicle over the goods, namely Bamboo Tree Sticks, the Tribunal was wrong in fastening liability on the Insurance Company.

10. Per contra, Mr.Amar D.Pandiya, learned counsel appearing for the claimants contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the

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order and therefore, the same need not be disturbed at this stage.

11. In ***United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1,*** a larger bench of this Court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity, the Insurance Company would not be held liable to pay compensation."

12. Section 147 of the Motor Vehicles Act enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are (i) the policy must specify the persons or class of persons, who are insured with respect to their liability to third parties (ii) the policy must specify the extent of liability which must extend to the extent specified in sub Section 2 of Section 147 and (iii) the liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of use of the vehicle in a public place. In fact, Section 147(1)(b)(i) was amended with effect from 14.01.1994 and it includes the owner of the goods or his authorised representative carried in the vehicle".

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13. An Insurance Company which faces a claim petition can raise a statutory defence that the vehicle was used for a purpose other than the purpose for which it is intended, in order to avoid its liability. This is one of the defences available to the insurer under Section 149(2)(a)(i)(c) of the Motor Vehicles Act.

14. In the decision ***in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, a Division Bench of this court***, after analysing various judgments of the Honourable Supreme Court has held thus.

> *50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent*

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to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

Therefore, the orders passed by the Tribunal directing the Insurance company to pay the award amount to the claimants in the first instance and then recover the same from the owner of the vehicle is liable to be set aside.

15. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently,

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connected Civil Miscellaneous Petition is closed.

ii. The quantum of compensation awarded by the Tribunal is upheld.

iii. The fourth respondent / owner of the Tata Ace is directed to deposit the entire compensation of Rs.3,55,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P. 443 of 2017 on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional District Judge, Kallakurichi.

iv. On such deposit being made by the fourth respondent / owner of the Tata Ace, the claimants are entitled to withdraw the same, as per the apportionment given by the Tribunal, after following due process of law.

v. The appellant, Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

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Index:Yes/No
Internet:Yes/No
Speaking/non Speaking order
mtl

To

1. The Motor Vehicle Accidents Claims Tribunal,
III Additional District Judge, Kallakurichi.

2.The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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