IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

C.M.A.No.2349 of 2019
and
C.M.P.Nos.10632 and 22537 of 2019

M/s. United India Insurance Company Limited,
No.28, Mailam Road,
Meenakshi Complex, 2nd Floor,
Tindivanam – 604 001.
No.134, Greams Road,
Chennai – 600 006. ... Appellant

Vs.

1.Ajith Kumar
2.V.Manicka Gounder
3.Sumathi ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 03.07.2018 passed in M.C.O.P. 1914 of 2014 on the file of the Motor Vehicle Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant	: Mr.J.Michael Visuvasam
For RR1 and 3	: Mr.C.Kanagaraj
For R2	: No appearance

J U D G M E N T

The appellant is the United India Insurance Company Limited, Chennai and they filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 questioning their liability to pay compensation to the claimant and the third respondent.

2. The first respondent / claimant filed a claim petition in M.C.O.P.1914 of 2014 before the Motor Vehicle Accident Claims Chennai, under Section 166 of the Motor Vehicles Act seeking compensation of Rs.20,00,000/- for the death of his father in a road accident that occurred on 01.06.2013.

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

On 01.06.2013, Murugan (since deceased) was travelling in a Tractor bearing Registration Number TN-32-T-5860 on Mundiambakkam – Chennai National Highways Road. The driver of the tractor drove the vehicle in a rash and negligent manner, as a result of which, Murugan fell down from the tractor and died on spot.

4. According to the claimant, the rash and negligent driving of the driver of the tractor was the cause of the accident and that since the said tractor was insured with the present appellant, the United India Insurance Company Limited, the owner of the tractor and the insurer are jointly and severally liable to pay compensation to him.

5. In the Tribunal, the owner of the tractor remained absent and was set *ex parte*. The appellant, the United India Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal, vide its orders dated 03.07.2018, fastened negligence on the part of the driver of the tractor and directed the appellant Insurance Company to pay compensation of Rs.15,18,600/- to the claimant and the third respondent 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 on the same cause of action. (Pay and Recover)

7. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal contending that since the deceased was a gratuitous passenger, the Insurance Company is not liable to pay any compensation to the claimant.

8. Heard Mr.J.Michael Visuvasam, learned counsel appearing for the appellant and Mr.C.Kanagaraj, learned counsel appearing for the respondents 1 and 3.

9. Mr.J.Michael Visuvasam, learned counsel appearing for the appellant relied on the decision of the Division Bench of this Court in ***United India Insurance Company Limited Vs. Lakshmamma and others (C.M.A.No.496 of 2021 dated 03.08.2023)*** and contended that the Insurance Company cannot be directed to pay compensation with regard to a passenger who is travelling in the mudguard of the tractor.

10. Per contra, Mr.C.Kanagaraj, learned counsel appearing for the

respondents 1 and 3 contended that the Tribunal after analysing the evidence on record had rightly ordered for 'pay and recover' 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. In the instant case, the deceased was not sitting in the permitted seating capacity and in fact the tractor does not have any seating capacity at all. Therefore, the Insurance Company cannot be held to be liable to pay compensation to the claimant.

13. 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".

14. 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.

15. 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 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.*

16. In the decision in ***United India Insurance Company Limited Vs. Lakshmamma and others*** (cited supra), a Division Bench of this Court has held thus.

"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 mud~guard 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.

17.The irresistible conclusion in the light of the above discussion is that the Tribunal erred in directing the Insurance Company to pay a compensation with liberty to recover the same from the Insurer. This Civil Miscellaneous Appeal is therefore, allowed with a direction that the decision of the Tribunal to pay and recover alone will stand deleted. Since the owner has not questioned the owner of quantum of compensation, we do not interfere with the same. No costs. Consequently, connected miscellaneous petition is closed."

17. In the instant case, Murugan (since deceased) was travelling in the mudguard of the tractor and therefore, the Insurance Company cannot be held liable to pay compensation to the claimant and the third respondent. Therefore, the order passed by the Tribunal directing the Insurance company to pay the award amount to the claimant and the third respondent in the first instance and then recover the same from the owner of the vehicle is set aside.

18. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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

iii. The second respondent / owner of the tractor is directed to deposit the entire compensation of Rs.15,18,600/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, to the claimant and the third respondent, 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. 1914 of 2014 on the file of the Motor Vehicle Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

iv. On such deposit being made, the claimant and the third respondent are entitled to withdraw the same, as per the apportionment made 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.

19.10.2024

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

To

1. The Motor Vehicle Accident Claims Tribunal,
Special Sub Court No.1, Small Causes Court, Chennai.

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

R.HEMALATHA, J.

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