IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.M.A. Nos.353, 355, 360 & 365 of 2022
and CMP. Nos. 2427, 2429, 2457 and 2472 of 2022

C.M.A.No.353 of 2022 :
United India Insurance Co. Ltd.,
No.134, Silingi Buildings
Greams Road, Chennai - 6. .... Appellant

Vs

1.Ponnusamy
2.R.Palani .... Respondents

C.M.A.No.355 of 2022 :
United India Insurance Co. Ltd.,
No.134, Silingi Buildings
Greams Road, Chennai - 6. .... Appellant

Vs

1.Mani
2.R.Palani .... Respondents

C.M.A.No.360 of 2022 :
United India Insurance Co. Ltd.,
No.134, Silingi Buildings
Greams Road, Chennai - 6. .... Appellant

Vs

1.Bottu
2.Mariammal
3.R.Palani .... Respondents

C.M.A.No.365 of 2022 :
United India Insurance Co. Ltd.,
No.134, Silingi Buildings
Greams Road, Chennai - 6. .... Appellant

Vs

1.Sankar
2.R.Palani .... Respondents

Prayer in CMA.No.353 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 praying to allow the appeal by setting aside the order and decreetal order dated 28.03.2019 in M.C.O.P.No.530 of 2011 passed by the VI Court of Small Causes, MACT-Chennai.

Prayer in CMA.No.355 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 praying to allow the appeal by setting aside the order and decreetal order dated 28.03.2019 in M.C.O.P.No.532 of 2011 passed by the VI Court of Small Causes, MACT-Chennai.

Prayer in CMA.No.360 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 praying to allow the appeal by setting aside the order and decreetal order dated 28.03.2019 in M.C.O.P.No.258 of 2010 passed by the VI Court of Small Causes, MACT-Chennai.

Prayer in CMA.No.365 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 praying to allow the appeal by setting aside the order and decreetal order dated 28.03.2019 in M.C.O.P. No.531 of 2011 passed by the VI Court of Small Causes, MACT-Chennai.

For Appellant (in all CMAs)	:	Mr.P.Sankaranarayanan
For Respondents (in all CMAs)	:	Mr.S.Parthasarathy for R1 Mr.K.Venkatasubban of M/s.Sarvabhauman Associates for R2

COMMON JUDGMENT

The Insurance Company has filed all these appeals challenging the awards passed in M.C.O.P. Nos.258 of 2010, 530 of 2011, 531 of 2011 and 532 of 2011 on the file of VI Court of Small Causes, MACT, Chennai, dated 28.03.2019.

2. The claimants in CMA.Nos.355, 360 and 365 of 2022 are the injured in this case and the claimants in CMA.No.353 of 2022 are the wife and daughter of the deceased.

3. The case of the claimants is that the injured and the deceased were transporting soil in the trailer attached with the tractor and they were travelling in the trailer as coolie workers. On 11.12.2009 at about 11.45 a.m., when the vehicle came near the curve, the driver of the tractor due to rash and negligent driving lost control and thereby the vehicle capsized. As a result of the same, one person died and three sustained grievous injuries. It is under this circumstances, the claim petitions came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence, came to a categorical conclusion that the accident had occurred only due to rash and negligent driving on the part of the driver of the tractor. Having rendered such a finding, the Tribunal went into the next question with regard to the liability on the part of the insurance company where the tractor was insured. The Tribunal found that only the tractor alone was insured under Ext.R1 and the deceased and injured had travelled in the trailer which was loaded with soil and bricks and therefore, the tractor was not used for any agricultural purpose and that apart, the trailer was an unregistered vehicle. On considering these facts, the Tribunal came to

a conclusion that the principle of pay and recover can be applied in this case and accordingly directed the insurance company to pay the compensation with liberty to recover the same from the owner of the tractor.

5. The Tribunal thereafter proceeded to fix the compensation amount in each of the claim petitions in the following manner :

Sl. No.	MCOP. No.	Compensation fixed
1.	258 of 2010	Rs. 6,04,000.00
2.	530 of 2011	Rs. 59.600.00
3.	531 of 2011	Rs. 40,000.00
4.	532 of 2011	Rs. 40,000.00

The above compensation was directed to be paid by the insurance company with interest at the rate of 7.5% per annum.

6. The insurance company has filed these appeals questioning the imposition of liability on it.

7. Heard Mr.P.Sankaranarayanan, learned counsel for appellant and Mr.K.Venkatasubban of M/s.Sarvabhauman Associates for second respondent.

8. This Court has carefully considered the submissions made on either side and the materials placed on record. This Court has also carefully considered the award passed by the Tribunal.

9. In the instant case, the insurance policy which was marked as Ext.R1 clearly shows that the policy is an "act only policy". It covered only the tractor with the driver plus one passenger, and the tractor was supposed to be used only for agricultural and forestry purposes. Thus the policy only covered the driver plus one person and it goes without saying that only in so far as third party claims are concerned, the concept of pay and recovery can be applied. In the case on hand, the injured and the deceased were travelling in the trailer which was attached to the tractor. The trailer was not registered and insurance policy did not cover the trailer. To top it, the tractor was not used for any agricultural purposes at the time of accident and the trailer that was joined along with the tractor was actually carrying soil and bricks, over which the deceased and the injured were sitting.

10. It must also be borne in mind that the policy in question is not a

comprehensive policy, but only an "act only policy".

11. The Apex Court in a recent decision had an occasion to deal with a very similar case where it was categorically held that where the tractor and trailer are involved, both the tractor as well as the trailer are required to be insured. If the claimant is travelling in the trailer which is not insured, the liability on the insurance company cannot be fastened. The Apex Court took into account the provisions of Section 147 of the Motor Vehicles Act. An useful reference can be made to the judgment of the Apex Court in ***Dhondubhai vs. Hanmantappa Bandappa Gangigude thru LRs*** reported in ***2023 ACJ 1979***.

12. This Court can also take note of a Division Bench judgment of this Court in ***Bharti AXA General Insurance Co. Ltd. vs. Aandi and Ors.*** reported in ***MANU/TN/7721/2018***.

13. The Tribunal while fixing the liability went on to hold that the violation/breach in this case is not a fundamental breach of the policy condition and therefore, applied the pay and recover principle. This finding

of the Tribunal is unsustainable for the reason that admittedly the trailer was not covered under the insurance policy and the policy in question is only an "act only policy", and therefore, this principle can never be applied. In any event, the liability cannot be fastened against the insurance company. In cases of this nature, Section 147 of the Motor Vehicles Act gives a clear indication on the limits of the liability of the insurance company which is governed by the terms and conditions of the policy and beyond the same, the liability cannot be mulcted against the insurance company.

14. In the light of the above discussion, this Court finds that the Tribunal went wrong in fastening the liability against the insurance company by applying the pay and recover principle and the same is liable to be interfered and set aside by this Court. For the sake of argument, if an offending vehicle is treated to be a goods vehicle, even then, the passenger travelling in the goods vehicle, gratuitous or otherwise will not be covered under the policy. The Full Bench of this Court in ***Branch Manager, United India Insurance Co. Ltd., Vs Nagammal & Others*** reported in ***2009 1 CTC 1*** has categorically held that any award passed after ***Baljit Kaur*** case, cannot apply the doctrine of pay and recover.

15. In the result, this Court holds that the insurance company is not liable to pay the compensation amount fixed by the Tribunal and the entire liability has to be borne only by the owner of the tractor. Hence, it is left open to the claimants to make their claims for the payment of compensation fixed by the Tribunal as against the owner of the offending vehicle. The owner of the offending vehicle is required to deposit the amount fixed by the Tribunal along with interest within a period of eight weeks from the date of receipt of a copy of this order.

16. All the above appeals stand allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

25.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ds

To:

1.The Judge, VI Court of Small Causes - MACT, Chennai.

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

N. ANAND VENKATESH., J

ds

C.M.A.Nos.353, 355, 360 & 365 of 2022

25.04.2024