IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1073 of 2021
C.M.P. Nos.5660 of 2021

The United India Insurance Co. Ltd.,
Katpadi Road, Vellore,
Vellore District. ... Appellant / 2nd Respondent

Vs.

1. K. Sobha
2. K. Saunilkumar
3. K. Anilkumar
4. Minor. K. Sangeetha
5. Minor. K. Annadurai
6. Minor K. Kaveri
7. Minor. Swetha
8. Minor. Giridharan
9. Minor. Harini
10. Myienavathy ... Respondents/ Petitioners

11. G. Asaithambi ... Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.04.2019 passed in M.C.O.P. No. 500 of 2017 on the file of the III Additional District Judge, Motor Accident Claims Tribunal, Vellore at Tirupattur.

For Appellant	:	M/s. D. Bhaskaran
For RR 1 to 10	:	M/s. A. Subadra
For R11	:	No Appearance

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and decree passed in M.C.O.P. No. 500 of 2017, dated 09.04.2019 on the file of the III Additional District Judge, Motor Accident Claims Tribunal, Vellore at Tirupattur.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 14.09.2017, at about 3:30 PM, the deceased Kanagaraj while working as helper cum water loader under the first respondent, was seated and travelling on a water tanker, attached with the tractor bearing Registration No.TN-23-AJ-8040, which belongs to the first respondent and driven by its driver in a rash and negligent manner met with an accident and capsized at the back side of Kaliyamman Koil in Vinnamangalam, resulted

in causing greivous injuries to Kanagaraj and subsequently, he died on the spot. A criminal case was registed against the driver of the tractor in Cr.No.367/2017 under section 279 and 304(A) of IPC on the file of Ambur Taluk Police station. For the loss of deceased Kanagaraj, the claimants, who are the legal heirs of the deceased filed claim petition seeking compensation for a sum of Rs.20,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the tractor remained ex-parte. The second respondent – insurance company filed counter, disputing the manner in which the accident has taken place and age, occupation, income of the deceased and also the dependancy of the claimants. The insurance company further contended that the alleged unregistered water tanker involved in the accident was not insured with any of the insurance company at the time of accident, hence the insurance company is not liable to pay any compensation.

5. The Tribunal considering the evidence placed on record, held that the rash and negligence on the part of the first respondent's driver is

responsible for the accident and directed the second respondent – insurance company to pay compensation to the claimants and recover the same from the first respondent. The Tribunal also quantified and awarded compensation for a sum of Rs.17,52,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the insurance company has filed this appeal challenging the award on the ground that there is no policy coverage for the deceased, who travelled in the tractor.

7. The learned counsel for the insurance company submitted that the Tribunal has not properly appreciated the evidence placed on record and held that the deceased herein is a third party to the proceedings and directed the insurance company to pay compensation to the claimants and recover the same from the first respondent. The Tribunal also failed to note that the liability can be determined only on the basis of the premium collected and seating capacity of the vehicle. Further submitted that the deceased herein is engaged by the first respondent to assist the driver, so, he cannot come under the purview of third party, hence prays to set aside the award of the

Tribunal. The learned counsel also relied on the judgment of the ***Hon'ble Apex Court in United India Insurance Company Limited vs. Suresh K.K. And another [(2008) 12 SCC 657]***, judgment of Full Bench of Karnataka High Court in ***Gadhilingappa and others vs. K. Guleppa and others [2021 (2) TN MAC 116 (FB) (Kar.)]*** and the judgments of the Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others [C.M.A. No.1893 of 2020, dated 19.07.2023]*** and ***United India Insurance Co. Ltd., vs. Lakshmamma and others [C.M.A. No. 496 of 2021, dated 03.08.2023]***.

8. The learned counsel for the claimants submitted that there is a coverage for the cleaner/ employee of the first respondent and the premium has also been paid under the caption IMT-20, hence the Tribunal has rightly held the principle of Pay and Recover and prays to confirm the award of the Tribunal. The learned counsel also relied on the judgment of Division Bench of this Court in ***The Divisional Manager, Royal Sundaran Aliance Insurance Co. Ltd., Vellore Vs. Shabiullah and Others [CMA.No. 2183 of 2017, dated 12.09.2018],*** judgments of this Court in ***New India Assurance Co. Ltd., vs. P. Vinayagasundaram and others [2013 (2) TN MAC 620]***

and ***Royal Sundaram Alliance Insurance Company Limited vs. S. Rajakannu and others [C.M.A.(MD) No. 728 of 2015, dated 24.11.2017]***.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. ***The Divisional Manager, Royal Sundaran Aliance Insurance Co. Ltd., Vellore Vs. Shabiullah and Others*** cited supra, wherein the Division Bench of this Court has considered the case of the cleaner and held that since there was coverage for the cleaner, the insurance company is liable to pay compensation and recover the same from the owner of the vehicle. In ***New India Assurance Co. Ltd., vs. P. Vinayagasundaram and others*** cited supra, this Court has held that the cleaner is also entitled for getting compenation, even though there was no coverage, since the accident was taken place while unloading the sand. However, these judgments are not applicable to the present case in hand, since the facts herein is that the deceased has travelled as a gratitous passenger and he was seated on the Water tanker attached with the tractor.

11. The Hon'ble Apex Court in ***United India Insurance Company Limited vs. Suresh K.K. And another [(2008) 12 SCC 657]*** dealt with the question regarding that a person, who was travelling in a capacity other than the owner of the goods, the insurer would not be liable and it is observed in paragraph 9 and 10 as follows:

> "9. *The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner of the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Courtis as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act 54 of 1994 was to widen the scope of the liability of the insurance company.*
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> *10. It is now well settled that the term "any person" envisaged under the said provision shall not include any gratuitous passenger. (National Insurance Co. Ltd., vs. Baljit Kaur) If the claimant had not been travelling in the vehilce as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage, the driver could not have allowed angybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy."*

12. The Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others [C.M.A. No.1893 of 2020, dated 19.07.2023]*** dealt with the question of the liability of the insurance company on payment of premium under IMT 28 and observed in Paragraph no.19 as follows:

> *"...It is seen from the policy marked as Ex.R.1 which discloses that the insurance company has collected premium of Rs.50/- for paid driver/conductor/cleaner under IMT 28. As rightly pointed out by the learned counsel for the Insurance Company* ***as per the Guidelines dated 29.03.2012 IMT 28 provides for extra premium per capital to Rs.50/-*** *for driver or cleaner or conductor employed with the conductor with the operation of insured vehicle. Therefore, the deceased would not be covered by the policy. Moreover, the deceased at the time of the accident has travelled in the tractor sitting on mudguard and the tractor being goods vehicle there has been breach of condition of policy. In the Manager* ***IFFCO-TOKYO GENERAL INSURANCE CO.LTD., Vs. G. RAMESH [2012(1) TN MAC 820]*** *this Court referring Asha Rani's case and other judgments, has held as follows:*
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> > *The question as to whether the Insurance Company is statutory liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by the Hon'ble Apex Court in Asha Rani;s case by reversing the earlier decision in Saptal Singh's case and further question as to whether the doctrine of "pay and Recover" theory, which is applied till then, by directing the insurer to satisfy the award and to recover the amount from the insured even though the insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench Judgment of our High Court. As per*

which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passenger travelling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."

13. The above facts squarely applicable to the case in hand, in this case, Ex.R.1 – insurance policy shows that Rs.50 has been collected as premium for the legal liability to the driver of the tractor and it has not stated anything about the liability towards the injuries for the loadman or cleaner or any other person. This Court in ***HDFC ERGO General Insurance Co. Ltd., vs. Bhagya Rekha and others*** cited supra has held that the compensation has to be paid to all the persons mentioned under IMT-28, it could be either driver, loadman or cleaner. In this case, the premium of Rs.50/- is paid only for one person, that too for the injuries of the driver of the tractor. Admittedly, in this case, the injured is not the driver of the tractor, hence IMT-28 is not applicable to the deceased herein.

14. The next contendtion is that the claimants are entitled to get compensation for the deceased, who succumbed to injuries during his

course of employment under the first respondent by invoking Workmen Compensation Act. This Court is unable to appreciate the same, since there is no insurance policy coverage for the workmen, the insurance company is not liable to indemnify the owner of the vehicle. Further, the pleadings of the claimants shows that the deceased in this case has travelled by sitting over the water tanker, attached to the tractor, at the time of accident. But, the evidence of R.W.1 – insurance company official stated that the deceased has travelled in the tractor by sitting on the mudguard of the tractor, therefore, it is admitted fact that the claimant has travelled in the tractor, which does not have seating capacity other than the driver of the tractor.

15. Based on the above observations, this Court is of the view that the person, who travelled in the trailer / water tanker attached to the tractor, which has no permitted seating capacity other than the driver is not entitled to get compensation from the insurance company under IMT-28. Hence, the contention of the claimants regarding compensation to be paid by the insurance company is liable to be rejected and they are only entitled to get compensation from the first respondent / owner of the tractor. Accordingly, the award of the Tribunal is liable to be set aside and the claimants are only

entitled to get compensation awarded by the Tribunal from the first respondent/ owner of the Tractor.

16. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. No cost.

02.02.2024

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
   Motor Accident Claims Tribunal,
   Vellore at Tirupattur.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.

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C.M.A. No. 1073 of 2021

02.02.2024