IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.717 and 720 of 2021
and
C.M.P.Nos.4307, 4310 of 2021, 15114 and 15115 of 2022

C.M.A.No.717 of 2021

The Branch Manager,
The Oriental Insurance Company Limited,
Vellore. ... Appellant

vs.

1.Bhavani
2.Eliyas
3.Manoharan ... Respondents

C.M.A.No.720 of 2021

The Branch Manager,
The Oriental Insurance Company Limited,
Vellore. ... Appellant

vs.

1.Bhavani
2.Minor. Aruna
(minor represented by her mother and natural guardian Bhavani)
3.Margabanthu
4.Saroja

5.Eliyas
6.Manoharan ... Respondents

PRAYER in C.M.A.No.717 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.07.2017 in M.C.O.P.205 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

PRAYER in C.M.A.No.720 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.07.2017 in M.C.O.P.216 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

In C.M.A.No.717 of 2021:

For Appellant : Mr.K.Vinod
for M/s.Elveera Antionette Ravindran

For R1 : Ms.R.Selvi George

For R3 : No appearance

In C.M.A.No.720 of 2021:

For Appellant : Mr.K.Vinod
for M/s.Elveera Antionette Ravindran

For RR1 and 2 : Ms.R.Selvi George

For R6 : No appearance

COMMON JUDGMENT

The appellant, the Oriental Insurance Company Limited, has filed the present appeals under Section 173 of the Motor Vehicles Act questioning their liability to pay compensation to the claimants in MCOP.205 and 216 of 2008 on the file of the Motor Accident Claims Tribunal, Arni.

2. The first respondent in C.M.A.No.717 of 2021 is the claimant in M.C.O.P.205 of 2008 on the file of the Motor Accident Claims Tribunal, Arni. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the death of one Lokeshwari, (daughter of the claimant), in a road accident that took place on 06.05.2006.

2.1. The respondents 1 to 4 in C.M.A.No.720 of 2021 are the claimants in M.C.O.P.216 of 2008 on the file of the Motor Accident Claims Tribunal, Arni. They filed filed the claim petition under Section

166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of one Palani (husband of claimant 1 ; father of claimant 2 and son of claimants 3 and 4), in a road accident that took place on 06.05.2006.

3. The brief case of the appellants / claimants is as follows :

On 06.05.2006, Lokeshwari (since deceased) was travelling with her father Palani (since deceased) in a Goods Auto bearing Registration Number TN-23-AB-6882 on Kanniyambadi - Amirthi Road. When they were nearing Arasampattu Village, the driver of the Goods Auto drove the vehicle rashly and negligently, as a result of which, the Auto capsized and Lokeshwari and her father Palani died on spot.

4. According to the claimants, the rash and negligent driving of the driver of the Goods Auto bearing Registration Number TN-23-AB-6882 was the cause of the accident and that since the vehicle was insured with the present appellant, the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal the owner and driver of the Goods Auto remained absent and were set *ex parte*. The appellant, the Oriental Insurance Company Limited resisted the claim petition by filing a counter affidavit before the Tribunal.

6. The Tribunal vide its orders dated 16.09.2016, fastened negligence on the part of the driver of the Goods Auto bearing Registration Number TN-23-AB-6882. Since the driver of the Auto did not have a valid driving license, the Tribunal directed the appellant Insurance Company to pay compensation of Rs.1,20,000/- to the claimant (in M.C.O.P.205/2008 for the death of Lokeshwari) and Rs.7,10,000/- to the claimants (in M.C.O.P.216/2008 for the death of Palani) 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 (Pay and Recover) from the owner of the vehicle.

7. Aggrieved over the orders passed by the Tribunal, the

appellant, the Oriental Insurance Company Limited has filed the present appeal contending that since the deceased were gratuitous passengers, the Insurance Company is not liable to pay any compensation to the claimants.

8. Heard Mr.K.Vinod, learned counsel appearing for the Insurance Company and Ms.R.Selvi George, learned counsel appearing for the claimants.

9. Mr.K.Vinod, learned counsel appearing for the Insurance Company relied on the decisions in (i) ***United India Insurance Company Vs. Nagammal and others*** reported in ***2009 (1) CTC 1 and (ii) 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*** and contended that since both the deceased were travelling in the Goods Auto sitting in the load area, there is a violation of policy condition and therefore, the Insurance Company cannot be held liable to pay compensation.

10. Per contra Ms.R.Selvi George, learned counsel appearing for the claimants contended that the Auto involved in the accident is a passenger auto and not a goods vehicle as contended by the learned counsel for the Insurance Company and therefore the order of pay and recovery passed by the Tribunal cannot be found fault with.

11. A perusal of the records shows that on the fateful day i.e. on 06.05.2006 the owner of the Goods Auto had allowed nearly fifteen persons as gratuitous passengers and deceased Lokeshwari and her father Palani were among them. The driver of the Auto drove the vehicle in a rash and negligent manner, as a result of which, the Auto capsized. It is seen from the Insurance Policy that the Auto is a goods carrying commercial vehicle and seating capacity is only two including the driver.

12. In the decision in ***United India Insurance Company Vs. Nagammal and others*** (cited supra) 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."

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 instant case, both the deceased were admittedly sitting in the load area. Therefore, the Insurance Company cannot be held liable to pay compensation to the claimants.

16. 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.

Therefore, the order 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.

17. In the result,

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

ii. The award amount passed by the trial court shall be paid by the owner of the Goods Auto.

iii. The appellant, the Oriental Insurance Company Limited is entitled to withdraw the amount, if already deposited by them.

iv. The owner of the Goods Auto is directed to pay the Award amount to the claimants.

30.09.2024

Index : Yes/No
Speaking/Non-speaking order

mtl

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Arni.

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

R.HEMALATHA, J.

mtl

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