



C.M.A.(MD).No.1097 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.11.2023

Delivered On : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1097 of 2012

The Branch Manager,
New India Assurance Co. Ltd.,
A.T.Associates,
710203, 2nd Floor,
251, T.H.Road,
Tondiarpet, Chennai – 21.

... Appellant/2nd Respondent

Vs.

1.Dhanabalan (died) ... 1st Respondent/Petitioner
(Memo dated 07.07.2022 in USR No.18106 is recorded
as R1 died vide Court order dated 22.09.2022 made
in C.M.A.(MD)No.1097 of 2012 by RTJ)

2.Muthupandi ... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No. 96 of 2007 on the file of the Motor Accident Claims Tribunal (Sub Judge), Paramakudi dated 04.04.2012.



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For Appellant : Mr.J.S.Murali
For R2 : No Appearance
For R1 : Died

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award passed by the Motor Accident Claims Tribunal (Sub Judge), at Madurai in M.C.O.P.No.96 of 2007 dated 04.04.2012 by the appellant/second respondent insurance company challenging the quantum and liability.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.96 of 2007.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

On 06.06.2006, the petitioner travelled with vegetables bags in a Eicher namely, Madurai Carriers bearing registration No.TN-58-M-7089 from Madurai to Ramnad and at about 06.00 p.m., when the lorry was nearing T.Pappankulam diversion, both the front tyres bursted and as the result of which, the lorry capsized. The petitioner and other loadmen



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sustained grievous injuries. The petitioner sustained five grievous injuries on his right humerus, Radius left ulnar, styloid, 5th MC left and right scapula. Immediately the petitioner was taken to Madurai Rajaji Hospital for treatment and on the same day, he was discharged from Madurai Rajaji Hospital. Thereafter, he was admitted as in patient in Pioneer Hospital Private Limited for treatment. He suffered permanent disability and as the result of which, he filed claim petition in M.C.O.P.No.96 of 2007 seeking compensation of Rs.2,00,000/- for the injury sustained by the petitioner.

4.The first respondent is the owner of the lorry involved in the accident and the second respondent is the insurance company in which the first respondent has insured his vehicle. The second respondent has filed a counter before the learned Tribunal refuting the allegations put forth in the claim petition stated that the first respondent's driver had violated the policy conditions, permit conditions and provisions of Motor Vehicles Act, thereby, permitting the petitioner to travel as the passenger in goods carrier vehicle and hence, claimed that the second respondent is not entitled to indemnify the first respondent.



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5.The learned Tribunal had framed two issues. The learned Tribunal examined two witnesses P.W.1 and P.W.2 on the side of the petitioner and Ex.P1 to Ex.P8 were marked and on the side of the respondents three witnesses were examined R.W.1 to R.W.3 and Ex.R1 to Ex.R3 were marked. After careful consideration of the evidence deposited by both the parties and also oral and documentary evidence available on record and considering the arguments put forth by both the parties, the learned Tribunal concluded that the first respondent's driver is responsible for the accident. Since he had violated the policy conditions by permitting passengers to travel in a goods carrier, the learned Tribunal passed an order directing the second respondent to pay a total award of Rs.1,79,163/- and thereafter recover the same from the first respondent. The learned Tribunal has awarded the compensation under following heads :-

Head	Compensation awarded
(i)Partial Permanent Disability:	Rs.60,000/- (40% x Rs.1500)
(ii)Extra Nourishment:	Rs.3,000/-
(iii)Pain and suffering:	Rs.25,000/-
(iv)Transportation:	Rs.5,000/-



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(v)Medical Expenses:	Rs.83,163/-
Total compensation awarded:	Rs.1,79,163/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the second respondent insurance company has filed this Civil Miscellaneous Appeal.

7.It is pertinent to mention here that the first respondent, who remained exparte before the learned Tribunal, has passed away. The pertinent question to be decided in the case in hand is whether the second respondent insurance company could be held liable to the claims of persons who are either unauthorized passenger or gratuitous passenger in a goods vehicle.

8.The question to be answered is no more *res integra* and it has been decided in more than one occasion by this Court and also the Hon'ble Apex Court in favour of the insurance company thereat. In the instant case, the petitioner/claimant is a third party, who travelled as the passenger in a goods carrier Eicher (lorry) namely Madurai Carriers



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bearing registration No.TN-58-M-7089, which is travelling from Madurai to Ramanathapuram. No doubt the petitioner had travelled along with vegetables bags from Madurai to Ramanathapuram in the said goods carrier (Madurai Carriers) and in the course of his travel, while the lorry reached T.Papankulam road, the same capsized due to the explosions of front wheels of the said vehicle. As the result of which, the petitioner sustained grievous injuries. No doubt the petitioner is the gratuitous passenger/unauthorized passenger. The learned Tribunal has directed the second respondent to pay the compensation as determined by it and thereafter, recover the same from the first respondent who is the owner of the vehicle and it is the said pay and recover order, which has been challenged by the appellant before this Court. Section 147 of the Motor Vehicles Act, 1988 is extracted as follows:-

“In terms of Section 147 of the Motor Vehicles Act, the insurance company is not required to cover the risk in respect of a person, who is travelling in a goods vehicle unless he is shown to be the owner of the goods or his authorized representative, which were also carried in the vehicle at the time of the accident.”



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9. That apart Section 149(2)(a)(i)(c) reads as under:-

“For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle.”

10. No doubt an insurance policy, which is mandatory statutory requirement, is required to cover only a certain class of persons and not every person who chooses to travel in any type of vehicle. Therefore, there is no mandatory requirement for the insurance company to cover persons who are travelling as passengers in non passenger vehicles/goods vehicle. It is a settled proposition of law that the insurance company is not bound to indemnify the insurer for the loss or injury caused to a person, who had travelled as passenger in a goods vehicle. The Hon'ble Division Bench of this Court in the case of ***Bharati AXA General Insurance Co. Ltd., v. Aandi and Ors.*** reported in ***2019 ACJ 1975***, has dealt with similar issue and the relevant portion of the same to the facts and circumstances of this case is extracted as follows:-

30. Sub-Section 2 of Section 147 lays down the limits of liability. SubSection 5 of Section 147 is a non-abstanti clause, which makes the insurers liable to indemnify the person or



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class of persons specified in the policy, in respect of the liability covered by the policy.

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.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1 st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.”

11.Yet another case of ***Kalavathy v. Annammal and others*** reported in ***2004 SCC Online Mad 56***, the Hon'ble Division Bench of this Court has passed the order in similar lines and the relevant portion of which is extracted as follows:-

“5. Learned counsel appearing for the 7th respondent



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Insurance Company by drawing our attention to Rule 238 of Tamil Nadu Motor Vehicles Rules, 1989, would point out that no one is permitted to travel in goods carriage since such permission would lead to falling him from the vehicle. He also points out that since the deceased travelled in goods carriage, he fell down and met with a fatal accident; hence the Insurance Company is not liable to pay compensation on behalf of the owner of the vehicle. The relevant rule, namely, Rule 238 reads as under:-

Rule 238. Prohibition of persons on the top of goods carriage.- No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in case shall any person be carried in a goods carriage in such a manner that any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests."

The above rule prohibits carrying persons in a goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle. We have already found that the materials placed before the Tribunal clearly show that the deceased was one among the other persons on being carried in a goods vehicle along with the paddy bags. Considering the conduct of the deceased and also



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the fact that the owner and the driver had permitted the deceased to travel in the goods carriage which ultimately met with the accident, we are of the view that the action of the owner and the driver is nothing but in violation of the above mentioned Rule. Thus, they are liable for action for breach of statutory provision namely Rule 238 of the Tamil Nadu Motor Vehicles Rules.

6. In the light of what is stated above and in view of the fact that the deceased travelled in a goods vehicle, which is contrary to the statutory provision of Rule 238 and also of the fact that no additional premium was paid to cover the risk of non-fair passengers and also in the light of the legal position as it stood prior to the amendment in 1994, we sustain the objection raised by the Insurance Company. The same was rightly accepted by the Tribunal by directing the owner-appellant herein to pay the compensation amount to the claimants. We do not find any merit in the appeal; consequently the same is dismissed. No costs.”

12. In yet another case of ***Royal Sundaram Alliance General Insurance Co. Ltd., v. P.Ayyakannu*** reported in ***2012 (1) TNMAC 89 (DB)***, the Hon'ble Division Bench has passed the order in similar lines and the relevant portion of which is extracted as follows:-

“10. Rule 236 provides that no person shall be carried in



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the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the paragraph extracted above from Anjana Shyam's case, the Supreme Court held that Section 149, cannot be understood as imposing a liability on the Insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the condition of registration of the vehicle and that through the Insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risk of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the Insurer is liable to indemnify the liable only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the Insurer was bound to cover.”

13.It is needless to state in the instant case that the petitioner was an unauthorized/gratuitous passenger who travelled Madurai Carriers in a goods carrier bearing registration No.TN-58-M-7089 on 06.06.2006 who in the course of the travel, met with an accident, sustained injuries. The seating capacity in said goods carrier is 1+2. However, the petitioner has travelled along with 7 others in the said goods carrier at the time of accident and it is the admitted case of petitioner that he was not at all a



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loadman, who travelled for the purpose of loading and unloading the goods in the said vehicle. It is the admitted case of the petitioner that he travelled by seating the vegetable bag in the said Madurai Carrier.

14.That apart the Junior Assistant of R.T.O. Office, Madurai has been examined as R.W.1 and he has categorically deposed in his evidence that in terms of records maintained in his office, the vehicle involved in the accident had permission for only three passengers to travel in the same and the said registration certificate and permission slip have been marked through him as Ex.R1 and Ex.R2. From Ex.R1 and Ex.R2, it has become clear that the first respondent driver has clearly violated his permit in Ex.R2 and also the policy conditions and the provisions of Motor Vehicles Act. However, the learned Tribunal proceeded to pass an order of pay and recover directing the second respondent insurance company to pay the award amount to the petitioner and thereafter, recover the same to the first respondent.

15.However, in view of the discussion supra, it is pretty clear that the petitioner driver by allowing unauthorized passenger/gratuitous



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passengers to travel in his vehicle had violated the permit conditions of the goods carrier namely Madurai Carrier bearing registration No.TN-58-M-7089 against the terms of permit and against the terms of conditions of the registration of the vehicle. Hence, I have no hesitation to hold that the second respondent insurance company is not responsible for indemnifying the liability of the first respondent.

16.However, this Court is not inclined to interfere with the quantum of the award. In view of the above, the appellant insurance company is permitted to withdraw the amount if any deposited towards the compensation payable to the 1st respondent/claimant and may proceed against the insured for recovering the amount already withdrawn, if any by the claimant.

17.Accordingly, this Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

Mrn

To

- 1.Motor Accident Claims Tribunal
(Sub Judge), Paramakudi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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