BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)Nos.184,185,186,187,188,189, 190,191,192,193,194 and 195 of 2011
and
M.P.(MD) Nos.1,1,1,1,1,1,1,1,1, 1,1 and 1 of 2021

C.M.A(MD) No.184 of 2011

The Manager
United India Insurance Company Limited
Tirunelveli ... Appellant/ Respondent No.2

Vs.

1. A Madasamy .. Respondent No.1/Petitioner
2. K.Shahul Hameed ... Respondent No.2/ Respondent No.1

Common Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside or modify the order of the Tribunal in M.C.O.P.No.29 of 2007 dated 04.12.2008 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Virudhunagar.

For Appellant : Mr.J.S.Murali

For R1 : Mr.T.Selvakumaran

For R2 : No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed to set aside and modify the order of the Tribunal in M.C.O.P.No.29 of 2007 dated 04.12.2008 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Virudhunagar, wherein the first respondent in the respective appeals have filed claim petitions due to the accident.

2. The Tribunal has awarded the compensation by fixing liability on the side of the appellant. Aggrieved over by the order passed by the Tribunal, the present appeal has been preferred by the Insurance Company/second respondent .

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal

4. **The brief facts of the petition averments in all petitions are as follows:**

On 27.09.2006 at about 3.30 hrs. when one Veluchamy along with other petitioners in claim petitions were proceeding in a van bearing Reg. No. TN 67 Q 8757 belonging to the first respondent insured with the second respondent from Virudhunagar to Pudupatti, the driver of the said auto had driven the vehicle in a rash and negligent manner and capsized on the road near R.R. Nagar, due to which, the said Velusamy died in the spot and other claimants sustained grievous injuries all over the body. The above said accident took place due to the rash and negligent driving of the driver of the first respondent. Therefore, the legalheirs of the deceased Velusamy and other injured persons have filed the claim application respectively for claiming compensation.

5. **The brief averments made in the counter filed by the second respondent of the petitions are as follows:**

The prayer in each petitions are not maintainable either in law or facts. The vehicle involved in the accident is load auto and the same was used for travel purpose which is against the condition of the policy, thereby the insurance company is not liable to pay any compensation to the petitioners and if any compensation is awarded the same has to be paid by the owner of the vehicle, therefore this respondent is not liable to pay any compensation to the petitioners. This respondent denied the age, income, occupation of the claimants and also denied the manner of accident and the accident did not take place due to negligence on the part of the driver of the first respondent, therefore, the second respondent is not liable to pay any compensation to the petitioners.

6. Before the Tribunal joint trial was conducted and common order was passed. Inorder to prove the case of the respective petitions in claim petitions, they have examined P.W.1 to P.W.13 and marked exhibits Ex.P.1 to Ex.P.17 and on the side of the respondents they have examined R.W.1 to R.W.3 and marked documents Ex.R.1 to R.5.

7. After hearing both sides and perusing the records, the Tribunal has awarded compensation and directed the appellants/second respondent herein to pay compensation to the respective petitioners and recover the same from the second respondent/first respondent ie., the owner of the vehicle. The learned counsel appearing for the appellant would contend that the vehicle involved in the accident is goods vehicle and the claimants have travelled as gratuitous passengers in the goods vehicle and thereby there is a violation of conditions of policy. Since there is violation of policy, the second respondent is not liable to pay any compensation to the petitioners. But the Tribunal without considering the same erroneously awarded compensation to the petitioners and directed the appellant to pay the amount and then recover the same from the owner of the vehicle i.e.,second respondent/first respondent. Inorder to support his contention, he relied on the judgment of this Court in the case of ***Bharathi Axa General Insurance Co. Limited .vs. Aandi and others*** reported in ***2018(2) TN MAC 731(DB).***

8. The learned counsel appearing for the first respondent in all appeals would contend that, the accident took place due to negligence on the part of the driver of the first respondent. Though the respondents/petitioners travelled in a goods vehicle, so far as petitioners are concerned, there are third parties to the insurance company, thereby the Tribunal after taking into consideration correctly awarded fair compensation and directed the insurance company i.e., the appellant/second respondent to pay the amount, thereby these appeal are liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in these appeals are :

i)whether the appeals are liable to be allowed or not?

10. In this case, there is no dispute with regard to the negligence on the part of the driver of the vehicle which involved in the accident and the appellant being insurer of the vehicle has taken a plea that claimants i.e., respondent/ petitioners have travelled as gratuitous passengers in the goods vehicle and thereby violated the conditions of policy and hence the company is not liable to pay compensation. The appellants also not denied the quantum

of amount and no appeal or cross objection filed by the claimants. The petitioners have also not filed any appeal as against the quantum. Therefore, this Court need not go into the quantum of compensation awarded by the Tribunal. The only point is whether the appellant/second respondent is all the appeals is liable to pay compensation or not.

11. According to the appellants since the first respondent/ petitioners travelled as gratuitous passengers, the insurance company is not liable to pay any compensation. But the Tribunal directed the appellant to pay the amount and directed to recover the same from the second respondent/first respondent/owner of the vehicle. According the appellant, since there is violation of policy, the order passed by the Tribunal to pay and recover is not permissible. To support his contention, he relied on the judgment of this Court in the case of ***Bharathi Axa General Insurance Co. Limited .vs. Aandi and others*** reported in ***2018(2) TN MAC 731(DB)*** Wherein, the Hon'ble Division Bench of this Court after relying the judgment of the Hon'ble Supreme Court has held as follows:

" 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 Honble 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"

12.On careful reading of the above said judgment, it is clear that in case of unauthorized passengers travelling in goods vehicle, the insurance company is not liable to pay any compensation and pay and recovery cannot be ordered.

13. However, in this case as per Ex.R.1, the seating capacity is two persons. Apart from the driver, one other person is also permitted to travel in the vehicle. In this context, first respondent/petitioner has argued that, though the petitioners travelled as gratuitous passengers, being third parties they cannot suffer. Though there is violation of policy, claim as against one person can be awarded as against the insurance company. In this context, he relied on the judgment of this Court in the case of ***Divisional Manager, Oriental Insurance Company Ltd, Sivakasi. vs. Perumal and others*** reported in ***2017(1) TN MAC 132***, wherein this Court has held as follows:

8.Such being the position, the Court shall conveniently consider the claim petition of the sole person, as a person covered within the policy. In view of the fact that no other person filed the claim petition in the accident and since the act itself is a welfare legislation the Courts must be liberal in covering the persons while granting compensation. Any welfare legislation is to be interpreted positively and as far as possible, the Court has to consider the claims of the poor victim died in the unfortunate accident. Hence, the arguments of the learned counsel appearing for the appellant that it is a case of no liability cannot be accepted, since one person is covered under the policy and this is the only claimant and hence, this Court is inclined to consider the case of the claimant by confirming the order of the Tribunal. At this juncture, the learned counsel appearing for the appellant claims that it is a case of pay and recovery. In view of the fact that the statutory violation and the deceased was travelling on the top of the van and therefore, the liability of the appellant/Insurance Company is to be exonerated. This arguments is sound enough to accept and accordingly the principles laid down by the Hon'ble Supreme Court of India in the case of Oriental Insurance Company Limited vs. Nanjappan and others reported in (2004) 13 SCC 224 is applied which is extracted below:

8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

14. On careful perusal of the above judgments, it is clear that, this Court in similar kind of case has awarded compensation to one person who travelled in a goods vehicle and the liability of the insurance company restricted to one person. In the case on hand also seating capacity is two including the driver, thereby, the insurance company is liable to pay compensation to any one person and the same can be recovered from the owner of the vehicle.

15. In the case on hand also, one person who died in the accident can be compensated by the insurance company and recover the same from the owner of the vehicle i.e, second respondent/first respondent. In so far as the other petitioners are concerned, the owner is liable to pay the compensation to the petitioners. Since there is no any dispute with regard to the quantum of amount, this Court need not go into the quantum of award passed by the Tribunal since the insurance company is liable to pay compensation to one person i.e., the claimant in MCOP No.40 of 2007 and the same can be recovered from the owner of the vehicle i.e., second respondent/first respondent. But the Tribunal has awarded compensation and directed the appellant/Insurance company to pay and recover in all the petitions. Since the petitioners travelled as unauthorized passengers the Insurance company is not

liable to pay compensation except in the case of M.C.O.P. No. 40 of 2007 as stated supra. Therefore the order of the Tribunal in all petitions except M.C.O.P.No. 40 of 2007 are liable to be modified.

16. In the result:

i) CMA(MD) No. 186 of 2011 stands dismissed.

ii) CMA(MD)Nos.184,185,187,188,189,190,191,192,193,194 and 195 of 2011 are partly allowed and the order of the Tribunal is modified to the effect that first respondent/owner of the vehicle is directed to pay the compensation as awarded by the Tribunal and the petition is dismissed as against the second respondent/Insurance company. Consequently connected miscellaneous petitions are closed.

18.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal,
Additional District Court, Fast Track Court, Virudhunagar.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

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C.M.A.(MD)Nos.184 to 195 of 2011

18.01.2024