BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.11.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.692 of 2014
and
M.P(MD)No.2 of 2014

The United India Insurance Company Limited,
through its Branch Manager,
The Divisional Office,
Jeevajothi Buildings, Salai Road,
Dindigul – 624 001. ... Appellants/Second Respondent

.Vs.

1.Surulivel(died)

2.Dhanalakhmi

3.Saravanamanikandan

4.S.Devi

(Fourth respondent is brought on record as legal representative of the deceased first respondent as per order of this Court made in C.M.P(MD)Nos.11605 to 11607 of 2024 in C.M.A(MD)No.692 of 2014, dated 6.11.2024) ... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.54 of 2009, dated 22.2.2011, on the file of the Motor Accidents Claims Tribunal(Sub-Judge), Uthamapalayam.

For Appellant	: Mr.G.Prabhu Rajadurai
Respondent-1	: Died
For Respondent-2	: Mr.V.Boominathan
For Respondent-3	: No appearance
For Respondent-4	:Mr.T.Selvakumaran

JUDGMENT

Against the order dated 22.02.2011 made in M.C.O.P.No.54 o 2009, on the file of the Motor Accidents Claims Tribunal(Sub-Court), Uthamapalayam.

2.The case as set out in the claim petition is given hereunder in brief:

On 12.01.2008, at about 6.15 p.m., while the claimants son

Rajaram was travelling in a Mini Door Auto(TN 59U 7929) from Suruli Theertham to Surulipatti towards northern side, at the point of Deivendran's Grape Farm, the driver Saravanan Manikandan drove the auto in a rash and negligent manner and at high speed and the vehicle capsized. Due to the said impact, the passenger Rajaram fell down from the auto, sustained fatal injuries and succumbed to the same on the way to hospital at about 7.00 p.m. As the accident had occurred due to the rash and negligent driving of the driver of the auto, the first respondent, owner of the said vehicle and its insurer, the second respondent/Insurance Company are jointly and severally liable to pay compensation for the death of the said Rajaram. The claim petition was filed claiming compensation of Rs.6 lakhs by the claimants, who are the parents of the deceased Rajaram.

3.The said details are denied by the first respondent and the first respondent in the counter he would state that on the date of occurrence, the deceased Rajaram travelled along with Shahul Hameed and when the auto was reaching Deivendran's farm, it is only

Rajaram who fell down from the auto and therefore, the owner of the vehicle is not liable to pay any compensation to the claimants.

4.Whereas, on behalf of the second respondent, it has been stated in the counter that the claimants are put to strict proof of age, avocation and income of the deceased and the manner in which the accident occurred. At the time of accident, Rajaram and his friend Shahul Hameed travelled in the mini door auto as unauthorized persons and it is in violation of policy conditions and therefore, the second respondent is not liable to pay compensation and the driver of the said mini door auto did not possess valid driving licence, thereby the policy conditions have been violated.

5.At trial, two witnesses were examined on the petitioners' side and nine documents were marked. On the second respondent's side, three witnesses were examined. The Insurance Policy is Ex.R1.The driving licence of the driver of the first respondent vehicle is Ex.X1 and the RC Book of the mini door auto(TN 59 U7929) is Ex.X3.

6.Upon consideration, the Tribunal held that the driver has permitted the deceased Rajaram and P.W.2-Balamurugan to travel in the goods carriage vehicle and it is in violation of the policy condition and ordered to pay the compensation of Rs.4,21,000/- by the second respondent/Insurance Company at the first instance and thereafter the second respondent Insurance Company is permitted to recover the same from the owner of the vehicle. This finding is sought to be challenged in this appeal.

7.It is the candid defense of the appellant/Insurance Company that the deceased Rajaram travelled as an unauthorized person in the mini door auto and permitting unauthorized person in a goods carriage vehicle is in violation of the policy condition and therefore the whole liability has to be fastened on the owner of the Mini Door Auto.

8.P.W.1 is the father of the deceased Rajaram. It is the evidence of P.W.2 one Balamurugan, who travelled in the Mini Door Auto that he along with the deceased Rajaram and Shahul Hameed travelled with waste oil in the mini door auto and while the auto was returning to Suruli Theertham, due to the rash and negligent driving of the driver of the vehicle,the Auto capsized and thus the accident had occurred. It is seen from his cross examination that, in all, three persons travelled in the auto and Rajaram was sitting besides the driver.

9.On the respondent side, no ocular witness was examined. Therefore, the evidence of P.W.2 explicate that due to the rash and negligent driving of the driver of the minor door auto, the accident has occurred.

10.As per Ex.P3, copy of the RC Book of Tempo three wheeler mini door pick up van, seating capacity is three persons. It is a light motor vehicle/ goods carriage vehicle.

11.The cross-examination of P.W.2 explicate that they brought waste oil in the Auto from Suruli. It is the evidence of P.W.2 that Rajaram was doing business of selling waste oil. It is his specific evidence that one cane of waste oil was brought in the Auto.

12.As regards the driving licence of the driver of the auto, driving licence is marked as Ex.R1 which is meant to drive Light Motor Vehicle. In Ex.P4, Motor Vehicle Inspector's Report, in column No.7-(particulars of driving licence if available), it is mentioned that valid till 09.01.2028. Therefore the contention of the Insurance Company that the driver of the goods carriage vehicle did not possess valid driving licence at the time of accident is not sustainable.

13.As regards the interpretation of Section 147(1)(b)(i) of the Motor Vehicles Act, the Honourable Supreme Court in ***National Insurance Company Limited .vs. Baljit Kaur and others reported in AIR 2004 SC 1340*** held that:

''11.Admittedly, it is incumbent upon a Court of

law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous.....The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words ''any person'' could be held not to include the owner of the goods or his, authorized representative travelling in the goods vehicle, parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.''

''After amendment, the following details were added namely, ''including'' the owner of the goods or his authorized representative carried in the vehicle''.

14.The amendment mandates that the owner has to insure compulsorily the owner of the goods or his authorized representative in the vehicle besides third parties.

15.My opinion is fortified by the observations of the Honourable Supreme Court in the decision cited supra, wherein, the Honourable Supreme Court has observed that:

‵′if such was the intention, there was no necessity for the Parliament to carry out the amendment inasmuch as the expression ‘any person’ contained in Sub clause(1) of sub clause (b) of Subsection(1) of Section 147 thereafter include the owner of the goods or his authorized representative besides the passengers who are gratuitous or otherwise.′′

16.The deceased has travelled as owne of the goods and he cannot be termed as unauthorized passenger. Therefore, the policy(Ex.R1) is a package policy and as per section 147(1)(b)(i) of the Motor Vehicles Act, risk in respect of owner of the goods is also covered. Therefore, I have no hesitation to hold that the insurer has to honour the policy in respect of death of the owner of the goods travelled in the insured vehicle, namely, Goods carriage vehicle.

17.In view of the said findings and observations, the order of the Tribunal has to be necessarily interfered with. Sequel to this, this Civil Miscellaneous Appeal filed by the Insurance Company stands dismissed; and

(1)the appellant Insurance Company is directed to deposit the award amount of Rs.4,21,000/-, as ordered by the Tribunal, with accrued interest and costs from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order, less the award amount if any already deposited.

(2)On such deposit being made, the claimants/respondents 2 and 4 are permitted to withdraw the award amount equally at Rs. 2,10,500/- each together with proportionate accrued interest and costs, less the award amount if any already withdrawn, by filing necessary application before the Tribunal.

(3)Excess Court Fee, if any, shall be refunded to the respondents

2 and 4/claimants, as per law.

(4)There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Sub-Judge,
(Motor Accidents Claims Tribunal),
Uthamapalayam.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

R.KALAIMATHI,J.

vsn

JUDGMENT MADE IN

C.M.A(MD)No.692 of 2014
and
M.P(MD)No.2 of 2014

21.11.2024