BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.11.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.845 of 2014

1.Kandasamy

2.Aruvagam ... Appellants/Claimants

.Vs.

1.Ahamed Khan

2.The National Insurance Company Limited,
represented by its Divisional Manager,
3, Northveli Street,
Madurai. ... Respondents/Respondents

PRAYER: 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.326 of 2005, dated 10.2.2011, on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge,Madurai,Fast Track Court No.III, Madurai.

For Appellant : Mr.K.C.Ramalingam

For Respondent-1 : No appearance

For Respondent-2 : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the claimants against the award made in M.C.O.P.No.326 of 2005, dated 10.2.2011, by the Motor Accident Claims Tribunal/Additional District and Sessions Judge,Madurai,Fast Track Court No.III, Madurai.

2.Despite the receipt of notice, the first respondent neither appeared nor represented through counsel.

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

On 17.11.2004 at about 9.30 a.m., the deceased Muthupandi, aged about 12 years along with several others travelled in a van bearing Registration No. TCQ 1116 from Melakkal to Thiruparamkundram to attend a marriage and while the Vanproceeding along Thirupparamkundram road. When the vehicle was nearing Pekamapuram Village, due to the rash and negligent driving of the driver of the said van, rear side tyre got burst, the vehicle turned topsy turvey. Due to the same, Muthupandi, aged 12 yars died on the spot and several others sustained injuries. The claimants are the parents of the deceased. The first respondent, owner of the said van and the insurer of the vehicle namely, the second respondent are liable to compensate the claimants and the claim Petition was filed claiming compensation of Rs.2 lakhs for the death of their son, who met with an road accident that occurred on 17.11.2004.

4.The details of the counter of the second respondent is given hereunder in brief:

The vehicle in which the deceased and others travelled is a medium goods vehicle and as per the permit, the vehicle is permitted to carry only goods. At the time of accident, the vehicle had been carrying more number of passengers and the vehicle was driven in a rash and negligent manner. While so, the rear side tyre got burst and the vehicle was capsized and fell down on the mud portion of the road. As the first respondent has violated the policy conditions, the second respondent is not liable to pay compensation and if at all any compensation is to be paid, the same has to be paid by the first respondent.

5.At trial, two witnesses have been examined on the claimant's side and five documents were marked. Motor Vehicle Inspector's Report pertaining to the van(TCQ 1116) is Ex.p4. The staff of the Regional Transport Office, Madurai North Tr. Venkatasubramanya Pandiyan was examined as R.W.1.The Official of the second respondent Insurance Company Tr.M.Balasubamaniyan is examined as R.W1. The copy of the Insurance Policy in respect of Van(TCQ 1116) is Ex.R2.

6.Upon consideration, the Tribunal concluded that due to the fault, carelessness and rash and negligent driving of the driver of the first respondent vehicle, and at the time of accident, the deceased and other passengers had travelled in the van un-authorizedly and it is in violation of the policy conditions and therefore, the second respondent was exonerated from the liability to pay the compensation and the first respondent was ordered o pay the compensation of Rs. 2,25,000/-. As the second respondent was exonerated from its liability to pay compensation, that part of the order is impugned by filing this appeal.

7.It is seen from the evidence of P.W.1 that on 17.11.2004, at about 9.30 a.m. While P.W.1 was travelling along with 28 other passengers in a medium goods vehicle(TCQ 1116) along with his son, aged about 12 years and when the vehicle was nearing Pekamapuram village, rear side tyre got burst,the vehicle capsized and the son of P.W.1 died on the spot besides so many persons sustained injuries. Though he stated that 10 or 15 persons travelled in the vehicle, he would accede that some 29 persons travelled in the goods vehicle. All of them travelled in the van in order to attend his elder sons marriage.

Another injured Selvam, son of Subramaniyam (PW.2) would support the version of P.W.1 as regards the accident. It appears that he suffered fracture of his right hand. From the cross-examination of P.W.2, it is discernible that due to the rash and negligent driving of the driver of the goods vehicle, rear side of the tyre got burst and the vehicle capsized thereby the accident occurred.

8.In order to substantiate the above said facts mentioned in the counter, staff of the Regional Transport Office of Madurai North/Thiru.Venkatasubramanya Pandian(R.W.1) was examined. It is his evidence that the said vehicle (TCQ 1116) is a medium range goods vehicle and the permit is Ex.R1 and it is his specific evidence that as per the permit, it is permitted to carry goods in the vehicle and travelling of persons is not permitted.

9.It is the evidence of R.W.2-Balasubramaniyam, who is the staff of the second respondent/Insurance Company, that as per the permit Ex.R1, the said van is a medium range goods vehicle and it has to be used only for the purpose of carrying goods. At the time of accident, as the said vehicle was used for transporting persons thereby the policy conditions have been violated. Ex.R2 is the copy of the Insurance Policy pertaining to the Van(TCQ 1116). It is his further evidence that on account of the violation of policy conditions, the second respondent-Insurance Company is not liable to pay compensation and the compensation so ordered is only payable by the first respondent, who has violated the policy conditions.

10.From a careful perusal of Ex.R1(Permit/TCQ 1116), it is deducible that the vehicle is a medium range goods vehicle and the owner is permitted to carry goods. Instead, on the relevant date, some 29 persons including the claimants along with minor son, aged about 12 years travelled in order to attend the marriage of the claimants elder son. It appears that some 29 persons travelled in the van not in the capacity of load-man, cleaner or owner of the goods. All the 29 persons travelled in order to attend the marriage of the elder son of P.W.2-Kandasamy. This claim petition is filed claiming compensation for the death of Muthupandi, aged about 12 years and all the persons travelled in the van have to be categorized as gratuitous passengers, the Honourable Supreme Court has dealt with the case of gratuitous passengers in ***National Insurance Company Limited .vs. Cholleti Bharathamma reported in 2008(2) TN MAC 29(SC)*** and the relevant portion is culled out and given hereunder:

> *''19.It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle....*
>
> *21.Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation.''*

11.Whereas, in ***National Insurance Company Limited .vs.Anjana Shyam and others reported in 2001(7)SCC 445,*** the Honourable Supreme Court has observed that Section 149, cannot be understood as imposing liability on the insurer to make payment even in respect of those, who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of Registration of the vehicle and that though the Insurer is bound to cover the Third Party risks of passenger authorized or permitted to be carried in the said vehicle and based on the said observation, this Court in ***Royal Sundaram Alliance General Insurance Company Limited .vs. P.Ayyakannu and others reported in 2012(1) TN MAC 89(DB),*** it was held that the insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle along with driver and whose liability alone insurer is liable to cover. As per Section 147(1-b)(i), the expression injury to any person including the owner of the goods or his authorized Representative carried in the vehicle was substituted by the Act 54 of 1994 with effect from 14.11.1994.The fact is the Insurance Company is liable to pay compensation in respect of persons travelling in the goods vehicle accompanying the goods or authorized representative. It is relevant to note that except persons mentioned in the said clause, the Insurance Company is not liable to pay compensation.

12.In the case of ***New India Assurance Company .vs. Satpal Singh and others reported in 2000 ACC 1(SC)*** with regard to the liability of the Insurance Company in paying the compensation to the gratuitous passengers as per Section 147(2), the Apex Court held that proviso to Section 147(1) of the New Act shows that is is a recast provision by placing the erstwhile clause(iii) as the present clause(ii). In other words, Clause (ii) of the proviso in Section 95(1) of the old act is totally non-existent in the proviso to Section 147(1) of the new Act and the same reads as under:

> *''8. Proviso to section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as the present clause9(ii).In other words, clause (ii) of the proviso in Section 95(1) of the old Act is totally non existent in the proviso to Section 147(1) of the new Act.*

9.Under section 147 of the new Act, the Policy must be a Policy which insures the person or classes of persons specified in the Policy to the extent specified in subsection(2):

(i)against any liability which may be incurred by him in respect of the death of or bodily(injury to any person, including owner of the goods or his Authorized Representative carried in the vehicle) or damage to any property of a Third Party-caused by or arising out of the use of the vehicle in a public place

(ii)against the death of or bodily injury to nay passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

10.The proviso to the said subsection is not relevant here as it pertains to death or bodily injury to the Employee mentioned therein. Sub section (2) provides that a Policy or Insurance shall cover any liability incurred in respect of any accident, upto the following limits, namely:

(i)save as provided in Clause(b) the amount of liability incurred;

(ii)in respect of damage to any property of a Third Party, a limit of Rupees six thousand;

Provided that any Policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such Policy whichever is earlier.''

Hence, under sub-section (2), there is no upper limit for the Insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is therefore apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his Authorized Representative carried in the vehicle. The Legislature has also taken care even the policies which were in force on the date of commencement of the act by specifically providing that any Policy o Insurance containing any limit regarding Insurer's liability shall continue to be effective of a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This *means, after the said period of four months, a new Insurance Policy consistent with the new Act is required to be obtained.*

11.The result is that under the new Act, an Insurance policy covering third party risk is not required to exclude Gratuitous passengers in a vehicle, no matter that he vehicle is of any type or class Hence, the decisions rendered under the old Act vis-a-vis Gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force.''

13.Therefore when the Insurance Company is successful in its defense under Section 149, still it has to pay the amount to the claimants at the first instance and thereafter, the Insurance Company may recover the said amount from the owner of the vehicle. If the Insurance Company is not statutorily liable to recover in respect of a passenger in a goods vehicle as per Section 147(1-b)(i), unless the passenger happens to be the owner or the agent of the owner of the goods accompanying in such goods, there is no need for the Insurance company to pay the compensation, since there is no contractual liability under the statue to pay the amount to the gratuitous passenger travelling in the goods vehicle.

14.Based on the legal position and discussion as mentioned supra, the first respondent, who is the owner of the goods vehicle is permitted persons (29 in number) to travel in his goods vehicle and it is in total violation of the permit and policy conditions. When the Insurance Company is not statutorily require to cover the liability in respect of a person in a goods vehicle under Section 147, except owner or agent of the goods accompanying such goods, the Insurance company is not under obligation to pay compensation, as there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. As the permit and policy conditions have been violated by the first respondent/owner of the vehicle by permitting 29 persons to travel in his goods carriage and the Tribunal fastened the liability only on the first respondent and exonerating the second respondent from its liability and the same cannot be found fault with. For the said reasons, no interference is called for in the said findings of the Tribunal.

15.Based on the aforesaid discussions, this Civil Miscellaneous Appeal stands dismissed; and

(1)the first respondent-Owner of the vehicle is directed to deposit a sum of Rs.2,25,000-/ towards compensation with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization 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 appellants 1 and 2/Claimants 1 and 2 are each entitled to a sum of Rs.1,12,500/- together with proportionate accrued interest and costs and they are permitted to withdraw their share in the award amount, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal.

(3)the appellants/claimants are directed to pay the balance Court Fee, if any, towards the award amount, failing which, Registry is directed not to draft the decree in the above said appeal.

(4)there is no order as to costs.

21.11.2024

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

To

The Additional District and Sessions Judge,
Fast Track Court No.III,
(Motor Accidents Claims Tribunal),
Madurai.

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.845 of 2014

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