BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.02.2024

CORAM:

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

C.M.A.(MD)No.32 of 2016
and
C.M.P(MD) No.8557 of 2023

The Branch Manager
The Oriental Insurance Company Ltd.,
No.251, First Floor
(opp. Old Ram Theatre Stop)
Arcad Road, Vadapalani,
Chennai- 600 026 ... Appellant/ Respondent No.2

Vs.

1. Alagammal ... 1st respondent/1st petitioner
2. Murugesan ..2nd Respondent/2nd Petitioner
3. Rengasamy ... 3rd Respondent/3rd Petitioner
4.Muthiah ..4th Respondent/ 1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the judgement and decree passed in MCOP No.9 of 2012 dated 08.04.2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.P.Ganapathi Subramanian
For R4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in MCOP No.9 of 2012 dated 08.04.2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai., Wherein the respondents 1 to 3 herein have filed a petition seeking compensation of Rs.10,00,000/-

2. The Tribunal has awarded a sum of Rs.9,19,700/- towards compensation and directed the appellant/second respondent herein to deposit the amount with 7.5% interest along with costs from the date of petition till the realization of the amount. Aggrieved over the order of the Tribunal, the appellant/second respondent has preferred this Civil Miscellaneous Appeal.

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 before the Tribunal are as follows:**

On 10.04.2007, at about 7.00 a.m., the second petitioner along with his father Ramaiya and others were travelling in the van bearing Reg. No TN 45 Y 8294, at that time the driver of the van drove the vehicle in a rash and negligent manner and dashed against the tree, thereby Ramaiya who travelled in the vehicle sustained blood injuries and he died in the hospital. The deceased was aged about 50 years and he was earning Rs.6000/- per month. The petitioners are legal heirs of the deceased, thereby they claim compensation for a sum of Rs.10,00,000/-.

5. The brief facts of the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or facts. The respondent denied the age , income, occupation of the deceased. The accident did not take place due to negligence on the part of the driver of the first respondent and the deceased himself travelled as gratuitous passenger and invited the accident. Since the vehicle is a goods vehicle and the deceased travelled as unauthorized passenger the appellant/second respondent is not liable to pay compensation to the petitioner, hence the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioners they have examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to P.8 and on the side of the respondent R.W.1 to R.W.4 were examined and exhibits R.1 to R4 were marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.9,19,700/- and directed the appellant/second respondent to pay the amount and then recover the same from the owner of the vehicle,i.e., fourth respondent/first respondent.

8. As against the order passed by the Tribunal, the second respondent/Insurance company has preferred this appeal on various grounds.

9. The learned counsel appearing for the appellant would contend that the vehicle involved in the accident is goods vehicle and in that goods vehicle the deceased along with others travelled as gratuitous passenger and thereby there is violation of condition of policy and hence the appellant/second respondent is not liable to pay any compensation to the petitioners. However the Tribunal without considering the above aspect awarded the amount directing the appellant/second respondent to pay the amount and then recover the same from the fourth respondent/first respondent, therefore the order passed by the Tribunal is liable to be set aside by allowing this appeal.

10.The learned counsel appearing for the respondents would contend that the accident took place due to the negligence on the part of the driver of the fourth respondent/first respondent. The said vehicle was insured with the appellant /second respondent. The seating capacity is 1+2. Though it is a goods vehicle the deceased alone died in the accident and the seating capacity is 1+2, thereby the appellant/second respondent is liable to pay compensation to the petitioners. After considering all the aspects the Tribunal has awarded a just and fair compensation by directing the appellant/second respondent to pay the amount to the petitioners and then recover the same from the owner of the vehicle i.e., fourth respondent/first respondent. Therefore the order passed by the Tribunal is liable to be confirmed by dismissing the appeal.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i)whether the appeal is liable to be allowed or not?

12. In this case, there is no dispute in respect of the accident and the negligence on the part of the driver of the first respondent and there is no dispute that the vehicle involved in the accident was

insured with the appellant/second respondent. The main contention of the appellant/second respondent is that the vehicle is goods vehicle and the deceased was travelled as gratuitous passenger and thereby the appellant/second respondent insurance company is not liable to pay any compensation to the petitioner, if at all any compensation is awarded the fourth respondent/first respondent alone has to pay the compensation.

13. It is admitted fact that the vehicle involved is goods vehicle and the deceased also travelled in the goods vehicle. The Tribunal after taking into consideration of all the evidences directed the appellant/second respondent, to pay the amount, as there is no evidence that, whether the deceased travelled in the said vehicle as gratuitous passenger and the seating capacity of the vehicle is 1+2 and the policy is also covered for 1+2, hence, the Tribunal has directed the appellant/second respondent to pay the amount. Since the fourth respondent/first respondent has not contested the case, the Tribunal directed the second respondent to recover the same from the first respondent.

14. Further even in the appeal, the first respondent has not contested the case and thereby, it is appropriate to confirm the order

passed by the Tribunal since there is no evidence that the deceased was travelled as gratuitous passengers and the deceased is only person who died in the accident and the claim is only as against one person. In this context, the learned counsel appearing for the appellant/second respondent relied on the following judgments:

i)National Insurance Company Ltd.vs. Ajit Kumar and others reported in 2004(1) TN MAC (SC)9

ii) Mr.Hydhras.vs. P.P.Kunhavaa and others reported in 2004(1) TNMAC 68(DB)

iii)Tamil Nadu State Transport Corporation .vs. Rajathi Thangamani and others reported in 2004(1) TNMAC 70(DB)

iv)United India Insurance Company Ltd, Vellore.vs. Chinnakannan and other reported in 2004(2)TN MAC 146 (DB)

v)Oriental Insurance Co Ltd .vs. Devireddy Konda Reddy and others reported in 2004(2) TNMAC 383(SC)

vi) New India Assurance Co Ltd .vs. Asha Rani and others reported in 2004(2)TN MAC 387(SC)

vii) Nagappa vs. Gurudayal Singh and others reported in 2004(2)TN MAC 398 (SC)

viii) National Insurance Co Ltd .vs. Bommithi Subbhayamma and others reported in 2005(1)TN MAC 169 (SC)

ix) United India Insurance Company Ltd .vs. Selvan and others reported in 2005(2) TNMAC (DB) 345

x) The Managing Director, TNSTC Ltd .vs. K.I. Bindu and others reported in 2005(2) TN MAC (SC)350

xi)New India Assurance Co Ltd., vs. Vedwati and others reported in 2007(1) TN MAC 205(SC)

xii)National Insurance Co Ltd .vs. Mozhi Arasi reported in 2007(1)TN MAC 210 (DB)

xiii) Smt.Thokchom Ongbi Sangeeths @ Sangi Devi and another .vs. Oriental Insurance Co Ltd and others reported in 2008(1) TNMAC 59(S.C)

xiv) National Insurance Co Ltd .vs. Cholleti Bharatamma and others reported in 2008(2)TN MAC 29(SC)

xv)Rajalakshmi Genguswamy Matriculation School vs. The Secretary, Regional Transport Authority, Pollachi, Coimbatore District reported in 2008(2)TN MAC 39

xvi)Branch Manager, United India Insurance Co Ltd., Branch Officer, Nethaji Bye pass Road, Dharmapuri Town .vs. Nagammal and others reported in 2009(1)TNMAC 1(FB)

xvii)G.Gnanam @ Gnanamoorthy .vs. Metropolitan Transport Corporation reported in 2009(1)TNMAC 23(SC)

xviii)National Insurance Co Ltd .vs. Kaushalaya Devi and others reported in2009 ACC 52 (SC) xix)National Insurance Co Ltd vs. Rattani and others reported in 2009(1) TNMAC 103(SC)

xx)Royal Sundaram Alliance General Insurance Co Ltd .vs.P. Ayyakannu and others reported 2012(1) TN MAC 89 (DB)

xxi) United India Insurance Co Ltd.vs. D.Tamilarasi and others reported in 2012(1)TN MAC 646

xxii) United India Insurance Co Ltd .vs. Annamalai and others reported in III (2012)ACC 484

xxiii) New India Assurance Company Ltd .vs. Sitaram Devidayan Jaiswal and others reported in III(2012)ACC 487

xxiv)Iffco Tokya General Insurance Co Ltd, Chennai .vs. Muthumani and others reported in 2014(2) TNMAC 442

xxv)The Branch Manager, United India Insurance Co Ltd .vs. K.Chandran and others reported in 2015(2) TN MAC 544

xxvi) Bharathi AXA General Insurance Co Ltd .vs.Aandi and others reported in 2018(2)TN MAC 731 (DB)

15. On careful perusal of the above judgements, it is clear that so far as gratuitous passengers are concerned, the Insurance company is not liable to pay compensation and the Court cannot pass order for pay and recovery. In the case on hand, the appellant /respondent have not proved that the deceased was

travelled as gratuitous passengers and the seating capacity is 1+2 thereby, there is no clear cut evidence that the petitioner travelled as gratuitous passengers. However, the first respondent being owner of the vehicle has not contested the case, thereby the trial Court fixed liability on the side of the appellant/second respondent and the same can be recovered from the first respondent. The order passed by the Tribunal is reasoned one and no warrant interference.

16. In the result, this Civil Miscellaneous Appeal stands dismissed by confirming the order of the Tribunal made in MCOP No.9 of 2012 dated 08.04.2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai. The appellant/insurance company is directed to deposit the entire award amount after deducting the amount already deposited with interest and costs, within period of two months from the date of this order On such deposit being made, the respondents 1 to 4 /claimants are permitted to withdraw the amount together with interest and costs by filing application before the Tribunal. Consequently connected miscellaneous petition is closed.

01.02.2024

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

1. The Motor Accident Claims Tribunal,
   Additional District Court, Pudukottai.

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

P. DHANABAL,J.

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