BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.100 of 2022
and
C.M.P(MD)No.964 of 2022

Branch Manager,
Cholamandalam MS General,
Insurance Company Ltd.,
Pudukkottai CIE,
Santhi Battery Service,
No.5523 South Street,
Pudukkottai District. ...Appellant/2nd Respondent

Vs.

1.Santhi
2.Minor Trisha
3.Minor Deepak,
4.Lakshmi
(Minor respondents 2 & 3
rep. through their mother/guardian
1st respondents herein) ....Respondents 1 to 4/
Petitioners 1 to 4

5.Saraswathi ...5th Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against judgment and decree made in M.C.O.P.No.111 of 2019 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Pudukkottai, dated 17.06.2021.

For Appellant : Mrs.K.R.Shivashankari
For R1 to R4 : Mr.Ganapathy Subramanian
For R5 : No appearance

JUDGMENT

[Judgment of the Court was made by
K.K. RAMAKRISHNAN.J.]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Principal District Judge) Pudukkottai in M.C.O.P.No. 111 of 2019, dated 17.06.2021, the Insurance Company has filed this appeal challenging the liability on the ground that the deceased was travelling as a gratuitous passenger in the goods vehicle and without considering the said plea the tribunal fixed the liability on the insurance company based on the available evidence that the deceased travelled as an authorised person as the owner of the goods.

2.The claimants filed a claim petition in M.C.O.P.No.111 of 2019, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Pudukkottai claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the death of one Kumar in the accident that occurred on 30.12.2018. By the order, dated 17.06.2021, the Tribunal awarded a sum of Rs.24,21,875/- (Rupees Twenty Four Lakhs Twentyone Thousand Eight Hundred and seventy five only) as compensation.

3.Facts of the Case:-

According to the claimants, on 30.12.2018 at 4.45 p.m., the deceased Kumar and one Murugesan were travelling in a Tata Ace vehicle bearing Registration No.TN-45-BA-6235 which belonged to the first respondent from Illuppur to Kadambarayapatty Kadambakulam Arch near Bagavathi Amman Kovil towards the direction of west to east for the purpose of delivering the cement bags at one Anjalai house and at that time, the driver of the first respondent's vehicle drove the vehicle in a rash and negligent manner and without following the road rules, the vehicle stumbled and capsized and rolled on the left side of the road. As a result, the said Kumar sustained grievous injuries on her head and shoulders and became unconscious and immediately, he was taken to Illuppur Government Hospital through 108 Ambulance but inspite of treatment, he died on the same day. The accident happened due to the rash and negligent driving of the driver of the first respondent. The jurisdictional police registered the case and after the investigation, filed the final report against the driver of the first respondent.

4. The second respondent, who is the owner of the lorry filed the counter and denied all the averments made in the claim petition and contended that Tata Ace is a Goods vehicle. The seating capacity of the vehicle is 2 in all including the driver. As per the FIR, three persons had travelled in the first respondent's vehicle at the time of accident. Due to over loading, the vehicle capsized and the inmates of goods vehicle were said to have sustained injuries including the deceased. The claim is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, to prove the case of the claimants, P.W.1 & P.W.2 were examined and marked Ex.P1 to Ex.P8. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked and Ex.X1 and Ex.X2 were marked.

6.**Findings of the Tribunal:**

The Tribunal, after considering the evidence adduced on the side of the claimants, held that the deceased travelled as an authorised person of the owner of the goods and there was no contra evidence adduced to show that he travelled as an un-authorised person. In the said circumstances, the tribunal considered the other evidence available on record and the policy marked as Ex.P4 held that the deceased travelled along with his goods in the goods carrying vehicle and he was authorised person and insurance company is liable to pay compensation. Challenging the same, the insurance company filed this appeal.

7.The submission of the learned counsel for the insurance company:

7.1.They only raised a point that the deceased was a gratuitous passenger. Hence, the insurance company is not liable to pay compensation. But, the learned trial Judge failed to consider the same in accordance with law. He produced the judgement of the Hon'ble Supreme Court in the case of ***New India Assurance Co. Ltd., Vs. Asha Rani and others*** reported in ***2003 2 SCC 223.***

8.The learned counsel for the claimants made the following submissions:

8.1.As per the Motor Vehicle Act and as per the terms of the policy, the insurance company is liable to pay compensation to the owner of the goods. In this case, the learned trial Judge on appreciation of the evidence adduced before the Tribunal has held that the deceased was authorised person and he was the owner of the goods. Therefore, the insurance company is liable to pay compensation.

9.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

10.The only question that arise for consideration of the appeal is whether the deceased travelled as a owner of the goods to mulct liability on the insurance company?

11.The deceased travelled in the vehicle insured by the insurance company bearing registration No.TN-45-BA-6235. He travelled in the vehicle with his goods, namely, cement bags and other building materials. The same was clearly deposed by P.W.2 in his evidence. There was no contra evidence adduced on the side of the appellant to disbelieve his version. Even though two witnesses were examined on the side of the respondent and none of the witness deposed satisfactorily before the learned Tribunal Judge that the deceased was not the owner of the goods and therefore, this Court has no reason to differ with the finding of the learned trial Judge. R.W.1 was examined on the side of the insurance company to dispute the liability and deposed that the deceased was a third party so far as the insurance company is concerned and he travelled as unauthorized passenger. But, this Court is unable to accept the evidence on the ground that he is not an eyewitness of the occurrence. When the eyewitness specifically deposed about the deceased carrying his own goods and travelled in the vehicle as the owner of the goods, the evidence of the R.W.1 cannot be accepted. The Learned Tribunal Judge correctly appreciated the same. Therefore, this Court rejects the contention of the insurance company and holds that the deceased was an authorised person and he is the owner of the goods and hence, the insurance company is liable to pay the compensation as per the Act and the policy condition. Under section 147 of Motor Vehicle Act 1988, the insurance company is liable to pay the compensation to the owner of goods which reads as follows:

> ***147. Requirements of policies and limits of liability.—***
>
> *(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which —*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily 1 [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;*

12. In view of the above specific provision in the Act and also in view of the specific evidence available on record, the deceased travelled along with goods representing as the owner of the goods. Hence, he cannot be treated as unauthorized passenger. Therefore, the question is answered against the insurance company and insurance company is liable to pay compensation.

13. This Court finds no merit in the appeal. Therefore, this Civil Miscellaneous Appeal is dismissedand the award passed by the Motor Accident Claims Tribunal, Principal District Judge, Pudukkottai in M.C.O.P.No.111 of 2019 dated 17.06.2021 is confirmed. The appellant insurance company is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any, as per the ratio of apportionment and order made by

the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
19.03.2024

Index :Yes/No
Internet :Yes/No
am/*sbn*

To

1.The Motor Accident Claims Tribunal
(Principal District Judge) Pudukkottai.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

am

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