BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.891 of 2017

M.Manickam (Died)

1.Madhavan

2.Rajeswari

3.Shanthi

4.Dhinakaran

5.Palaniyappan ... Appellants/LRs of the Claimant

Vs.

1.A.Joseph

2.M/s.New India Assurance Company Limited,
Represented by its Branch Manager,
480, Sekkalai Road,
Karaikudi-630 001. ... Respondents/Respondents

(Cause title accepted vide Court order, dated 19.10.2016 made in C.M.P(MD)No.9343 of 2016 in C.M.A(MD)SR.No.35634 of 2016)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decreetal order in

M.C.O.P.No.866 of 2004 on the file of the IV Additional Sub Judge, Madurai (Motor Accident Claims Tribunal) Madurai, dated 14.09.2012 and to allow this Civil Miscellaneous Appeal by directing the second respondent before the Tribunal to compensate the petitioner.

For Appellant : Mr.B.A.Muruganantham

For R-1 : No appearance

For R-2 : Mr.C.Karthik

JUDGMENT

The instant appeal has been filed by the claimants in M.C.O.P.No.866 of 2004 on the file of the IV Additional Sub Court (Motor Accident Claims Tribunal), Madurai, challenging the exoneration of the Insurance Company.

2. According the injured claimant, the deceased person was travelling in a goods vehicle and it was driven by the driver in a rash and negligent manner and it got capsized. Hence, he has prayed for a compensation of Rs.2,00,000/- from the owner of the vehicle and in-turn the insurer of the vehicle.

3. The owner of the vehicle had filed a counter contending that, he had paid premium for non fare paying passengers to the Insurance Company and therefore, the Company is liable.

4. The Insurance Company has filed a counter contending that, at the relevant point of time, more than 11 persons have travelled in the goods vehicle for the purpose of attending a function. Therefore, all of them including the claimants are gratuitous passengers and therefore, the company is not liable to pay any compensation. The Tribunal after considering the evidence let-in on either side had arrived at a finding that, the accident has taken place only due to the rash and negligent driving on the part of the first respondent. The Tribunal has further found that, as per Exhibit P.1 FIR, more than 10 persons have travelled in the goods vehicle for the purpose of attending a function. Therefore, all of them are un-authorised passengers, which is a case of breach of permit and policy conditions. When the payment of premium towards legal liability of non-fare paying passengers was pointed out to the Tribunal, the Tribunal has observed that, that may be applicable to few persons but not 10 persons, who are taking the goods in a goods carriage. On the above said findings, the Tribunal proceeded to exonerate the Insurance

Company and mulcted the liability upon the owner of the van. Challenging the exoneration of the Insurance Company, the present appeal has been filed by the injured claimant.

5. According to the learned Counsel appearing for the appellants / claimants, the owner of the van had paid a sum of Rs.50/- towards legal liability of non fare paying passengers. Therefore, even assuming that they have travelled in the goods vehicle as passengers, they are entitled to receive compensation under the Insurance policy. He further pointed out only one claim petition has been filed arising out of the said accident.

6. Per contra, the learned Counsel appearing for the Insurance Company relied upon the clauses in the Insurance policy under the head of limitations as to use and contended that, the vehicle cannot be used for carrying passengers except the employees. Admittedly, the injured claimant is not an employee and therefore, he is not covered under the policy. He further pointed out that, the owner of the vehicle has not challenged the mulcting of liability upon him and therefore, he prayed for dismissing the appeal, confirming the award passed as against the owner of the van.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. From Exhibit P.1 FIR, it could be seen that, around 10 persons have travelled in a goods vehicle carrying the Sridhana articles to attend a family function. A perusal of Exhibit R.1 Insurance policy indicates that, the owner of the vehicle has paid an additional premium of Rs.50/- under the head of legal liability of non fare paying passengers. Therefore, it is clear that gratuitous passengers in a goods vehicle are also covered under the policy. Though the learned Counsel appearing for the Insurance Company has pointed out that, under the head of limitations as to use only employees could be carried in the vehicle, I am not convinced with the said submissions, in view of the fact that, it is a general clause incorporated in the policy. On the other hand, a special contract has been entered into between the insurer and the insured person by paying an additional premium. The Insurance Company has taken up an additional risk on payment of additional premium. Therefore, a general clause cannot be taken into consideration for exonerating the Insurance Company.

9. The Tribunal has further held that even assuming that legal liability of non fare paying passengers would be applicable to the present case, but since more than 10 persons are travelled at the relevant point of time, such a clause cannot be invoked for payment of compensation. It is to be noted that only one claim petition has arisen out of the said accident. However, it is an admitted fact that, more than 10 persons have travelled in the goods vehicle. In such circumstances, this Court is of the opinion that, there is clear policy violation on the part of the insured person. For the said policy violation, the Company cannot be exonerated fully but they have to be mulcted with the liability to satisfy the award and thereafter recover the same from the owner of the goods vehicle. This order is being passed taking into consideration the fact that, the owner has not chosen to challenge the liability mulcted upon him.

10. In view of the above said deliberations, the following order is passed:

"1) The award of the Tribunal exonerating the Insurance Company is hereby set aside.

2) The respondents 1 and 2 in the claim petition are jointly and severally liable to pay the said *compensation.*

3) After satisfying the award, the Insurance Company is entitled to recover the same from the first respondent in the claim petition.

4) In other respects the award stands confirmed."

11. With the said observation, the appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The IV Additional Sub Judge, Madurai
(Motor Accident Claims Tribunal)
Madurai.

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

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.891 of 2017

08.07.2024