BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1146 of 2018
and
C.M.P(MD) No.11755 of 2018

The National Insurance Company Limited,
Represented by its Branch Manager,
Main Road,
Bodinayakanur Town and Taluk,
Theni District. ... Appellant/2nd Respondent

-vs-

1. Jeyammal ... 1st Respondent/1st Petitioner

2. Sudha ... 2nd Respondent/2nd petitioner

3. Elamaran
4. Rasi
5. Seeniammal (died) ... Respondents 3 to 5/ Petitioners 3 to 5

6. Selvaraj @ Chinnasamy ... 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.06.2012 in M.C.O.P.No.31 of 2011 on the file of the Motor Accident Claims Tribunal/ Sub Court, Uthamapalayam.

For Appellant : Mrs.P.Malini

For Respondents : No appearance

JUDGMENT

The respondents 1 to 5 herein who are the claimants had filed M.C.O.P.No.31 of 2011 on the file of the Motor Accident Claims Tribunal/ Sub Court, Uthamapalayam, seeking compensation for the death of one Mayee who had travelled on the back side of the lorry over and above the vegetable load. When the driver had applied sudden brake, the deceased had fallen down from the vehicle and sustained injuries and had passed away. The claimants sought for compensation of Rs.6,00,000/- (Rupees Six Lakhs only).

2. The owner of the mini lorry had remained *exparte*. The Insurance company had filed a counter contending that the deceased person had travelled on the back side of the mini lorry sitting over the vegetable load. Therefore, he is an unauthorized passenger and not covered by the Insurance Policy.

3. The Tribunal after considering the oral and documentary evidence, in paragraph No. 9 of the award, has arrived at a finding that there is no record to prove that the deceased had travelled as owner of the goods. It has further found that the deceased had travelled only as an unauthorized passenger. However, the Tribunal has proceeded to pass an order of pay and recovery on the ground that the policy covers the injury/death of the deceased person also. Challenging the said order of pay and recovery, the present appeal has been filed by the Insurance Company.

4. The learned counsel appearing for the appellant/Insurance Company had contended that the Tribunal has arrived at a finding that the deceased had travelled as a gratuitous passenger on a goods vehicle and should not have ordered pay and recovery. The entire liability ought to have been fastened on the first respondent in the claim petition who is the owner of the Mini Lorry.

5. Though notices were served upon the claimants and the owner of the vehicle, they have not chosen to appear either in person or through their counsel.

6. A perusal of the findings of the Tribunal clearly indicate that the deceased person had not travelled in the said goods vehicle as owner of the vegetable load. On the other hand, he had travelled over the vegetable load as a gratuitous passenger. These facts are further fortified by the evidence of P.W.2. The Tribunal has also arrived at a finding that the deceased has travelled only as a gratuitous passenger. Therefore, the Insurance policy would not cover gratuitous passenger travelling in the goods vehicle, that too, on the back side of the vehicle over and above the load. The judgment of the Hon'ble Division Bench of our High Court reported in ***2018 (2) TNMAC 731 (Bharati Axa General Insurance Company Limited Vs. Aandi and others)*** has categorically held that the unauthorized passengers in a goods vehicle are not covered by the Insurance Policy and when, there is no coverage, the question of pay and recovery would not arise.

7. The above judgment is squarely applicable to the facts of the present case. When there is no coverage, the question of ordering of pay and recovery would not arise. In view of the above said facts, the liability imposed upon the appellant/Insurance Company is set aside. The entire liability is fastened the 6th respondent in this appeal/first respondent in the claim petition namely, the owner of the mini lorry. The Insurance Company is exonerated from the

liability to pay the compensation. In other respects, the award of the Tribunal stands confirmed.

8. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. The amount deposited by the appellant/ Insurance Company shall be refunded to them along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.04.2024
(2/2)

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

1. The Motor Accident Claims Tribunal/Sub Court,
   Uthamapalayam.

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

R.VIJAYAKUMAR,J.

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