(2014) 07 MAD CK 0014

In the Madras High Court

Case No : C.M.A.Nos.3706 to 3708 of 2013 and M.P.Nos.1, 1 and 1 of 2013

IFFCO - TOKIO General Insurance Company Ltd. APPELLANT

Vs

Muthumani RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 442

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.C.R.Krishnamoorthy, Advocate, for the Applicant; Mr.S.Sathiaseelan, Advocate, for the Respondent No.1

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—Since the issue involved in all the above appeals are one and the same, the appeals are disposed of by way a common judgment.

2. All the above appeals have been filed by the Insurance Company questioning the order passed by the Tribunal directing the Insurance Company to pay the compensation amount to the victim/claimants and thereafter, to recover the same from the owner of the vehicle.

3. The 1st respondents in all the above appeals are the claimants before the Tribunal. It is the case of the claimants that on 12.09.2008 at about 5.30 pm, while they were tranvelling, as loading and unloanding coolies, along with serial sets, in the Mahendra Maxi Truck Van bearing Registeration No.TN 29 AB 6028 owned by the 2nd respondent herein and insured with the appellant/Insurance Company, the said vehicle met with an accident, in which they had sustained grievous injuries. Hence, they have made separate claim petitions before the Tribunal as against the owner of the vehicle and its insurer.

4. The claim petitions were resisted by the Insurance Company contending that the claimants had travelled as unauthorised passengers in the Mahendra Maxi Trucks Van bearing Registered No.TN 29 AB 6028. The said vehicle was used in

contravention to the provisions of the Motor Vehicles Act. Hence, the Insurance Company is not liable to pay any compensation amount. Under such circumstances, the question of paying the compensation amount to the claimants and recover the same from the owner of the vehicle, does not arise in this case.

5. But, the Tribunal after analysing the evidence adduced on either side, has come to the conclusion that the victims/claimants have travelled in the said vehicle as gratuitous passengers. However, the Tribunal has directed the appellant/Insurance Company to pay the compensation amount and to recover the same from the owner of the vehicle. Aggrieved over the same, the present appeals have been filed by the Insurance Company.

6. Heard the submissions made on either side and perused the materials available on record.

7. In view of the submissions made on either side, the following question falls for consideration_

"Whether, in the case of injury sustained by the unauthorised passenger while travelling in a goods carriage vehicle, can a direction be given to the Insurance Company to pay the amount to the victim and recover the same from the owner of the vehicle?

8. In fact, I had an occasion to deal with the same issue in the case of United India Insurance Company Ltd., v. M. Thangavel [2011 (2) TN MAC 774]. In the said case, by relying upon various judgments of the Hon''ble Supreme Court, it has been held that only in a case, where the Insurance Company is successful in its defence under Section 149, it may yet be required to pay the amount to the Claimant and thereafter, it may recover the same from the owner of the vehicle. When the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle under Section 147, unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely, there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. Under such circumstances, a direction could not be given to the Insurance Company to pay the owner and recover from the owner of the vehicle.

9. Now, it is the submission of the leaned counsel for the claimants that if the matter has already been decided by the Trial Court by directing the Insurance Company to pay the compensation amount to the claimant and to recover the same from the owner of the vehicle, it is in the discretion of the appellate Court to decide as to whether the doctrine of ''pay and recover'' could be applied, depending upon the facts and circumstances of the case. In this regard, the learned counsel for the claimants relied upon the judgment of a Full Bench of this Court reported in 2009(1) CTC 1 (Branch Manager, United India Insurance Co. Ltd. v. Nagammal)". In that case, the Full Bench of this Court by relying upon various judgments of the Hon''ble Supreme Court, has held as follows:-

"31(vii).Where, however, the matter has already been decided by the Trial Court before the decision in Baljit Kaur''s case, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of ''pay and recover'' should be applied or as to whether the claimant would be left to recover the amount from the person liable ie., the driver or the owner, as the case may be."

The learned counsel for the claimants has also produced number of judgments delivered by this Court and submitted that in all those cases, this Court has confirmed the order passed by the Tribunal, with regard to the doctrine of ''pay and recovery'', in the case of gratuitous passengers travelling in a goods carriage vehicle.

10. But, a careful perusal of the judgment of the Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd. v. Nagammal), cited supra, I find that in the said case, the Full Bench has held that if the matter has already been decided by the Trial Court before the decision of Baljit Kaur''s case [reported in 2004 (1) TN MAC 1] and it would be in the discretion of the appellate Court, depending upon the facts and circumstances, to determine as to whether the doctrine of ''pay and recover'' could be applied.

11. The Judgment in Baljit Kaur case, cited supra, was delivered by the Hon''ble Supreme Court in the year 2004. But, in the case on hand, the award has been passed by the Tribunal only in the year 2012. Therefore, the dictum laid down in the above said judgment of the Full Bench of this Court, cannot be made applicable to this case.

12. In fact, in the judgment reported in 2013(11) SCC 554 in the case of National Insurance Company Ltd v. Savitri Devi and others, the Hon''ble Supreme Court has set aside the order of the High Court, where the High Court had directed the Insurance Company to pay the compensation amount to the victims and to recover the same from the owner of the vehicle in the case of gratuitous passengers travelling in goods vehicle. Therefore, in my considered opinion, in the case of gratuitous passengers travelling in goods carriage vehicle, absolutely there is no need to pay compensation by the Insurance Company, since there is no contractual liability under the statute to pay the amount to the gratuitous passengers travelling in the goods carriage vehicle.

13. Therefore, the order of the Tribunal to the extent of directing the Insurance company to pay the compensation amount to the claimants and to recover the same from the owner of the vehicle alone is set aside and the Insurance Company/appellant herein is exonerated from its liability to pay the compensation amount. The claimants can work out their remedy to get the compensation amount from the owner of the vehicle in the manner known to law. The appellant/Insurance Company is permitted to withdraw the amount deposited by them if any before the Tribunal.

14. With the above terms, the Civil Miscellaneous Appeals are ordered.

Consequently, connected Miscellaneous Petitions are closed. No costs.