(1999) 08 MAD CK 0134

In the Madras High Court

Case No : C.M.A. No. 233 of 1995

Manager, National Insurance Co Ltd., Calcutta — APPELLANT

Vs

Nagammal and 5 others — RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Citation : (1999) 08 MAD CK 0134

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Ravikumar for Mr. K. Ranganathan, for the Appellant; K. Mahendran for R1 to R4 and R6, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—National Insurance Company is the appellant, herein. In the claim petition filed by the respondents 1 to 4, the L.Rs.. of the deceased Muniyandi, who died due to negligent driving of the driver of the jeep, 5th respondent herein, belonged to Kamal Astafa,'' the 6th respondent herein the claim was made for Rs. 60,000/-. The Tribunal awarded Rs. 50,000/-. The Tribunal further directed the Insurance Company to pay the said amount on behalf of the owner of the jeep.

2. Aggrieved by this award, the present appeal has been filed by the Insurance Company.

3. On 7.6.87 at about 6.00 P.M., the deceased Muniyandi along with one Arumugham, Poomi, Kumaraiah and others were traveling in the jeep MDT 8486 driven by the 5th respondent in order to go to Paramakudi. At that time, the jeep was driven in a rash and negligent manner and met with an accident, when it got fire and hit against an electric post. Muniyandi, who sustained serious injuries, later died on 28.10.87.

4. To prove the claim, on behalf of the claimants, namely, widow and children of the deceased, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 were marked. On

behalf of the respondents, viz, the owner of the vehicle and the Insurance Company, R.Ws.1 to 3 were examined and Exs.A-1 to A-3 were marked.

5. The Tribunal, after enquiry, concluded that the driver was negligent and the Insurance Company is liable to pay on behalf of the owner of the vehicles and that the claimant would be entitled to Rs. 50,000/- as compensation.

6. Challenging this award, the appellant herein has filed this appeal mainly on the ground that at the time of accident, the deceased was traveling as an unauthorised gratuitous passenger and that therefore, since the policy does not cover for the unauthorised passengers, the Insurance Company is not liable to pay any compensation.

7. In order to substantiate the said plea, the Learned Counsel appearing for the appellant would cite the decision in Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co (1977 A.C.J. 343 (S.C.)= 90 L.W.73 S.N. in which it has been held that Section 95 of the Act would exclude the liability of the Insurance Company regarding the risk to the unauthorised passengers.

8. On the other hand, the Learned Counsel appearing for the 6th respondent-owner of the vehicle, would contend that the materials would show that the deceased was not an unauthorised passenger and he was taken along with others to Paramakudi with the permission of the owner, since they were known to them. As it is, it shall be taken that they are not the unauthorised passengers and the jeep took them to Paramakudi only by way of private use and as such, the finding of the Tribunal is correct.

9. I have gone through the records and carefully considered the rival contentions.

10. In the instant case, P.W. 2 eye-witness has been examined. Though he would state that he paid money to some persons, in the course of cross-examination, he would admit that he did not know to whom he had paid money and they were allowed to travel in the jeep only under the instructions of the owner of the vehicle upto Paramakukdi, as they were known to him.

11. R.W.1, the driver of the jeep, also would state that only under the instructions of the owner of the vehicle, the deceased and other people were taken in the jeep. This is corroborated by R.W.2, the owner of the vehicle. Under these circumstances, there is no material to conclude that the deceased and others were unauthorised or gratuitous passengers.

12. On the other hand, a reading of the counter filed by R.W.2, the owner of the vehicle and the evidence of R.W.s.1 and 2 would clearly show that they were traveling in the jeep, as they were permitted by the owner (RW2) since they were well known to them. Under those circumstances, it is for the Insurance Company to prove that the policy condition has been violated.

13. R.W.3 is an Officer attached to the Insurance Company, who would simply state by marking Exs.R-2 and R-3, the policy copies, that the policy would not

permit the jeep to be used for carrying unauthorised passengers.

14. It is now argued by the counsel for the Insurance Company that even the authorised passengers would not be covered under the policy. This submission may not hold good, in view of the fact that under the policy, along with driver five persons were allowed to travel.

15. R.W.3 himself would admit during the course of cross-examination that it would cover the driver and 5 occupants.

16. Under those circumstances, it cannot be said that the Insurance Company has established that they are not liable to pay the compensation, since the policy would not cover the unauthorised persons or the conditions of the policy had been violated by the owner of the vehicle. Therefore, the decision cited by the Learned Counsel for the appellant would not apply to the present facts of the case. In the result, the appeal is dismissed. No costs.

