
(2016) 11 MAD CK 0054

In the Madras High Court

Case No : CMA (MD)Nos. 988 and 1259 of 2005 and CMP (MD) No. 6145 of 2005 and M.P. (MD) Nos. 1 of 2006 and 1 and 2 of 2008 (Against the judgment and decree dated 29.11.2004 made in MCOP. No. 597 of 2001 on the file of the Motor Accident Claims Tribunal, Fast Track

National Insurance Co. Ltd.

APPELLANT

Vs

V. Mani

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, Section 166, Section 173

Citation : (2017) ACJ 1378 : (2017) 1 AnWR 143 : (2017) 1 AnWR 48

Hon'ble Judges : Mr. S.M. Subramaniam, J.

Bench : Single Bench

Advocate : Ms. K. Mahalakshmi for Mr. R.P. Ramachanthiran, Advocates, for the Respondent No. 1 in CMA (MD) No. 988 of 2005; Mr. S. Srinivasa Raghavan, Advocate, for the Appellant in CMA (MD) 988 of 2005; Ms. K. Mahalakshmi for Mr. R.P. Ramachanthiran, Advocates, for

Final Decision : Disposed Off

Judgement

Mr. S.M. Subramaniam, J. - It is the case of an injury caused on account of the accident took place on 13.04.2001 around 02.00 p.m on Karambakudi to Malaiyur road near Ariyandi Pirivu road. The injured victim filed an application seeking compensation before the Motor Accident Claims Tribunal, Fast Track Court, Pudukkottai, and the Tribunal considering the facts and the circumstances of the case, awarded Rs.2,53,870/- as total compensation with interest at 9% per annum. Challenging the award, the National Insurance Company preferred CMA(MD)No.988 of 2005 and not satisfied with the quantum of compensation, the injured/claimant preferred CMA(MD)No. 1259 of 2005, seeking enhancement of compensation.

2. Learned counsel for the appellant/insurance company contended that the vehicle met with the accident, is a goods vehicle and as per the policy conditions and the conditions of the registration, only two persons are permitted to travel in

the said vehicle, including the driver and no coverage is given in respect of a third person, who was travelling in the goods vehicle. Learned counsel for the insurance company further contended that in respect of two persons covered by policy, including the cleaner, the claims were settled and the documents were marked before the Tribunal, to establish that they have complied with the policy conditions. In respect of the third person, the insurance company is not liable to pay the compensation. To substantiate this, the Registration Certificate of the goods vehicle as well as the policy of insurance were marked as Exs.R1 & R2 and these documents were not disputed by the injured claimant before the Tribunal, but the Tribunal erroneously found that there was violation of policy conditions as well as the conditions stipulated in the Registration Certificate of the goods vehicle, and awarded compensation, on the ground that the claimant was travelling as owner of the goods and therefore, he is covered under the insurance policy.

3. Learned counsel for the claimant opposed the contentions of the insurance company, by stating that only two persons can be covered under the policy and the claimant being the owner of the goods, is entitled to get compensation from the insurance company. In support of his contentions, he relied upon the following decisions:-

(I) CDJ 2013 DHC 2139, Shobha Devi v. Bajaj Allianz General Insurance Co. Ltd.

(ii) 2014 (1) TN MAC 714, United India Insurance Co. Ltd. v. Selvi.

(iii) 2013 (1) TN MAC 870, K. Murugan v. M. Panchavarnam.

(iv) 2015 (2) TN MAC 788, New India Assurance Co. Ltd. v. A. Manoharan.

4. Heard both sides.

5. In the judgment reported in CDJ 2013 DHC 2139, Shobha Devi v. Bajaj Allianz General Insurance Co. Ltd., the Delhi High Court considered the issue as hereunder:-

4. The averments made in the Review Petition are refuted by the Respondent Insurance Company. It is, however, conceded that the seating capacity as per the registration certificate was two. It is stated that in the insurance policy, the seating capacity was mentioned as one and premium of Rs. 25/- towards legal liability of one more person for operation/maintenance was charged.

5. I have already extracted Para 4 of the impugned judgment wherein this Court relied on the judgment in United India Insurance Company Limited v. Suresh K.K. & Anr. (2008) (12) SCC 657 and observed that in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. Since it is proved that the seating capacity was two, another person was entitled to sit in vehicle No. DL-1LH-1762 involved in the accident in addition to the driver.

6. Learned counsel for the Respondent Insurance Company has not been able to explain as to how the premium of Rs. 25/- was charged as legal liability for

operation/maintenance for one more person in addition to the driver. In any case, even if no separate premium is charged for the owner of the goods, the risk is required to be covered for the owner of the goods by Section 147 (i) (b) (i) of the M.V. Act as amended w.e.f. 14.11.1994. The deceased Bhonu Sahani @ Upender Sahani was travelling in the vehicle No. DL-1LH-1762 from Kapashera to Gazipur market to purchase fish. In Oriental Insurance Company Limited v. Hazara & Ors., AIR 2012 Delhi 26, a coordinate Bench of this Court relying on National Insurance Company Limited v. Sarojamma & Ors. 2009 ACJ 119 held that wherever a person travels in a goods vehicle to reach the place for purchase of the goods, he would be deemed to be owner of the goods. Paras 4 and 5 of the report are extracted hereunder:-

"4. In 2009 ACJ 119 National Insurance Co. Ltd. v. Sarojamma and Ors. a similar situation has arisen; a vegetable vender was travelling in a Tempo to procure vegetables for his shop when the unfortunate accident occurred; accident had occurred before he had reached his destination point. The evidence had come on record that the vehicle had been hired by him for the purpose of transportation of his goods; he not being a gratuitous passenger and nor a fare paid passenger insurance company was held liable. This court finds support from the ratio of this judgment delivered by the Karnataka Bench.

5. A reading of Section 147 of the Motor Vehicle Act in fact clearly shows that if the death or injury has occurred to any person including the owner of the goods or his authorised representative in the vehicle, insurance company is liable. Evidence in the present case shows that the accident had occurred before the victim could reach the destination point to purchase their buffaloes. The vehicle had been hired by them only for transporting the goods and they were travelling in this vehicle for this purpose which was the transportation of their goods; even though the goods were not in the vehicle when the vehicle met with the accident but the vehicle was proceeding to reach the place of its destination, in such a scenario it cannot be said that the victims were gratuitous or paid passengers. The vehicle i.e. the cantor had been hired by them only this purpose; in such a situation if their vehicle had met with an accident, it had to be deemed that the goods were with them. It is thus clear that the finding of the learned Tribunal on this count suffers from no infirmity. Appeals of the insurance company are accordingly dismissed."

7. Since, it is admitted that the seating capacity of the vehicle involved in the accident was two and one more person could travel in addition to the driver, the judgment dated 22.02.2012 is liable to be reviewed.

8. The Respondent Insurance Company shall be under obligation to satisfy the award and pay the compensation to the Petitioners No.1 to 5 (Respondents No. 1 to 5 in the main Appeal)."

6. Learned counsel for the claimant has wrongly interpreted the above judgment, by stating that three persons are totally covered under the insurance policy. It is

the wrong interpretation of the above said judgment of the Delhi High Court. The Hon'ble Delhi High Court unambiguously ruled that two persons alone are entitled to sit in the goods vehicle, including the driver. On reading of the entire judgment, it is clear that the Hon'ble Delhi High Court has also clarified that only two persons are eligible to claim compensation in respect of the goods vehicle, including the driver. But the counsel for the claimant has erroneously interpreted the judgment under the wrong pretext that three persons are covered in total. Hence, the judgment in Shobha Devi's case, has no application to the facts of the present case.

7. In the another judgment relied on by the counsel for the claimant reported in 2014 (1) TN MAC 714, United India Insurance Co. Ltd. v. Selvi, this Court has referred to a decision of the Kerala High Court reported in 2011 (1) TN MAC 541 (Ker), United India Insurance Co. Ltd. v. P.O. Pappu, in which, it has been held as follows:-

".....the person accompanying the goods or the owner of the goods were not covered by the terms and conditions of the policy. But by virtue of the incorporation of the amended provision the owner of the goods or the representative of the owner of the goods is statutorily covered. Now it is the case of the claimant that he has been accompanying the goods as the owner of the goods against which there is no contra evidence. Claimant along with the driver of Autorickshaw was travelling in the autorickshaw as the owner of the goods.

.... I am referring to this only for the reason that the insurance company also knew the fact that the autorickshaw can carry two persons. I am conscious of the fact that the coverage of two employees will not take in the claimant. But by virtue of the statutory fiction under Section 147 of the Motor Vehicles Act the owner of the goods or the representative of the owner of the goods is covered by the policy without additional premium. Since the claimant had travelled in the autorickshaw which can take two persons and that as he had travelled as the owner accompanying the goods by virtue of the dictum laid down in Asharani's case as well as the statutory fiction under Section 147 (1) of the Motor Vehicles Act, the said person is covered under the Act. Therefore, the insurance company cannot get exonerated from the liability and they are liable to pay the amount. Therefore, from these discussions, I find nothing to interfere with the decision rendered by the Tribunal. Therefore, the appeal fails and the same is dismissed."

8. In this judgment also, it is clarified that the owner of the goods accompanied with the driver is covered under the policy and entitled for compensation from the insurance company, but it has never been stated in the facts of the case that there were three persons travelling in the vehicle. Hence, the judgment in Selvi's case, also has no application to the facts of the present case on hand, in which, three persons were travelling and the insurance company had paid compensation in respect of the driver and cleaner.

9. Yet another judgment relied on by the counsel for the claimant reported in

2013 (1) TN MAC 870, K. Murugan v. M. Panchavarnam, enumerates the statutory coverage for the owner of the goods accompanying the vehicle. The counsel for the insurance company is not disputing the fact that the owner of the goods accompanying in the vehicle is also entitled for compensation from the insurance company under the policy. But, if the owner of the vehicle travelled as a third person, the first two namely, driver and cleaner alone are entitled for compensation under the insurance policy. Therefore, the judgment in K.Murugan's case, submitted by the counsel for the claimant, also has no application in respect of the facts of the present case.

10. In the judgment reported in 2015 (2) TN MAC 788, New India Assurance Co. Ltd. v. A. Manoharan, relied on by the counsel for the claimant this Court held that owner of the goods or loadman as per the capacity cannot be construed as gratuitous passenger. The facts and circumstances of the present case are not connected with A. Manoharan's case, because, in the case on hand, the appellant insurance company had already settled the compensation in respect of two persons namely, driver and cleaner.

11. In all the cases cited supra, two persons alone were travelling in the goods vehicle, including the driver and in all the above said cases, the third person in occupation of the goods vehicle was not granted compensation under the insurance policy. Hence, the present facts and circumstances are not similar to that of the cases cited supra, by the counsel for the claimant and accordingly, the contentions raised by the counsel for the claimant deserve no consideration and the same are rejected.

12. Considering the rival contentions made by the learned counsels both for the insurance company and the claimant, this Court is of the view that it is a case, where three persons were travelling in the goods vehicle, out of which, one driver and cleaner or one driver and any other person travelling with the driver, including the owner of the goods, alone can be covered as per the insurance policy and as per the conditions stipulated in the Registration Certificate. It is unambiguously proved by the insurance company before the Tribunal that another person namely, cleaner who was travelling along with the driver was awarded with compensation and the insurance company settled the compensation in respect of the cleaner. Further, the third person cannot be fitted with the coverage of the driver and the status of the driver can never be changed under any circumstances. In view of the fact that the second person namely, cleaner, had already received the compensation from the insurance company, another third person cannot be entitled to receive the compensation from the insurance company.

13. Therefore, this Court is inclined to consider the grounds of appeal raised by the insurance company and accordingly, the award dated 29.11.2004 made in MCOP.No.597 of 2001 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Pudukkottai, is set aside. It is represented that the entire award amount with interest had already been deposited to the credit of the claim

petition. Hence, the appellant insurance company is permitted to withdraw the entire award amount with interest lying in the credit of the claim petition, by making necessary application before the Tribunal.

In the result, CMA(MD)No.988 of 2005 filed by the insurance company is allowed and CMA(MD)No.1259 of 2005 filed by the claimant is dismissed. No costs. Consequently, CMP(MD)No.6145 of 2005 and M.P(MD)Nos.1 of 2006 and 1 & 2 of 2008 are closed.