

(2010) 11 MAD CK 0430

In the Madras High Court

Case No : CMA. (MD) No"s. 1380 and 1381 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Thangavel and S.M. Maheswari

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 147, 149(2)

Citation : (2010) 11 MAD CK 0430

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; I. Suthakaran, for Respondent 1, R. Lakshmanan, for Respondent 1 in CMA. 1381/2008 and A. Sivaji, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The above appeal and the Civil Revision Petitions are arising out of the common judgment rendered in MCOP Nos. 13,14,15,16,17 & 18 of 2006, dated 03.04.2008, on the file of the Motor Accident Claim Tribunal, Arupukottai.

3. The first Respondent in the appeal and in the Civil Revision Petitions filed the above MCOP claiming compensation in respect of an motor accident that took place on 03.05.2005 at about 3 a.m.

4. The case of the claimant viz., the first Respondent in all the claims was that they travelled in the motor vehicle bearing No. TN 67 C 8787 insured with the Appellant/revision in the appeal and the Civil Revision Petitions as load men for unloading red Chilly bags belonging to Pandi, Mari and Duraipandi. In the early morning on 03.05.2010, the motor vehicle met with an accident and in that accident, all the claimants were injured and therefore, they filed claim applications, claiming for injuries sustained by them. The 2nd Respondent in this

appeal and in the Civil Revision Petitions is the owner of the said vehicle and in her counter, she has stated that the accident was due to the rash and negligent driving of the driver and the claimants travelled in the lorry only as owners of the goods carried in the lorry and therefore, the Appellant/revision Petitioners viz., Insurance Company is liable to pay compensation and the policy was in force at the time of accident.

5. The Appellant, in this appeal and revision Petitioner, in all the revision petitions, filed counter stating that the claimants were unauthorised passengers and they never travelled in the vehicle as load-men or the owners of the goods carrying on vehicle and they are unauthorised passengers travelling in the goods vehicle and therefore, the Insurance Company is not liable to pay any amount to them as there is no coverage of insurance for such unauthorised passengers.

6. All the above petitions were heard together and by a common judgment, the Motor Accident Claim Tribunal, Arupukottai, dated 03.07.2008, ordered compensation on various grounds to the Petitioners and directed the Appellant/revision Petitioner to pay the said amount and later, recover the amount from the owner, the 2nd Respondent in this appeal and the civil revision petitions. This order is challenged in this appeal and in the civil revision petitions by the Insurance Company.

7. Mr. G. Prabhu Rajadurai, the learned Counsel appearing for the Appellant/revision Petitioner, submitted that the Tribunal having given a specific finding that the claimants are unauthorised passengers, travelled in the lorry and they did not travel in the lorry either as owners of the goods or as load-men, erred in directing the Insurance Company to pay the compensation and ought not to have directed, the Insurance Company to pay the compensation and later recover from the owner and ought to have made liable only as the owner, 2nd Respondent herein to make the payment.

8. In support of his contention, the learned Counsel appearing for the Appellant/revision Petitioner relied upon the judgment reported in 2008(1)MLJ 66 ;2010(2) MLJ 93 and also 2006(4) SCC 2005 and contended that in all these case, the Honourable Supreme Court has held that when there is no coverage for the persons, who travelled in the vehicle, the Insurance Company cannot be made liable to pay the compensation and even the Insurance Company cannot be directed to pay the amount and recover the same later from the owner of the goods.

9. He further submitted that u/s 147 of the Motor Vehicles Act, there is no duty cast upon the Insurance Company to cover the passenger, who travelled in the goods vehicle and in this case, there is coverage for those persons to travel in the goods vehicle and the Tribunal has also held that the claimants are unauthorised passengers and therefore, the Insurance Company ought to have been exonerated.

10. Mr. I. Suthakaran, the learned Counsel appearing for the 1st Respondent, in

the appeal and the civil revision petitions relied upon the following judgments:

01.2009(1) TN MAC 648, in the case of National Insurance Co. Ltd v. Ellappa and Ors..

02.2007(1) CTC 234, in the case of The Oriental Insurance Company Limited, 304, Police Station Road, Pollachi v. Mottaiammal and others and also the Full Bench judgment of this Court reported in 2009(1)TN MAC 1,in the case of United India Insurance Co. Ltd., v. Nagammal and Ors. and submitted that the Full Bench of this Court after thoroughly discussing the law on that aspect held that the Honourable Supreme Court has not laid down that in all cases where passengers are being carried in the goods vehicle, they cannot be any direction to the Insurance Company to pay the amount first and recover the same later and the Honourable Supreme Court also held that in the judgment reported in 2008(1) TN MAC 294 (SC) in the case of Sardari and Ors. v. Sushil Kumar and Ors., confirmed the order of the High Court in directing the payment by the Insurance Company and later recover the same from the owner and therefore, there is no merit in the contention of the Insurance Company and the appeal and the civil revision petitions are liable to be dismissed.

11. Mr. A. Sivaji, the learned Counsel appearing for the owner viz., the 2nd Respondent, in the appeal and the civil revision petitions, also relied upon the judgment reported in 2010(2) CTC 423, in the case of Cholamandalam MS General Insurance Co. Ltd., Car House, 2nd Floor, 234, NSC Bose Road, Chennai-1 v. 1. Veerasamy 2. Rajammal 3. Raji and 2007(5) MLJ 235 (SC), in the case of National Insurance Co. Ltd., v. Anjana Shyam and others, and submitted that as per permit, six persons are entitled to travel in the goods vehicle, even assuming that more than persons travelled in the vehicle as per the judgment of the Honourable Supreme Court in the judgment reported in 2007(5) MLJ 235(SC), in the matter of National Insurance Co. Ltd., v. Anjana Shyam and others, the highest compensation awarded for all the claimants must be found out and from and out of that, the compensation for the covered persons must be calculated and the same can be distributed among all the claimants and the balance shall be directed to be recovered from the owners. He, therefore, submitted that the Petitioners even assuming that they are unauthorised passengers, having regard to the fact that those persons are permitted to travel in the cabin of the vehicle, they can be given compensation.

12. I have given my anxious consideration to the submission made by both the counsels.

13. As rightly contended by the learned Counsel appearing for the Appellant as well as for the revision Petitioners, Mr. G. Prabhu Rajadurai, whenever the Honourable Supreme Court directed payment by the Insurance Company even in cases where there is no coverage as per Section 147 of the Motor Vehicles Act, the Honourable Supreme Court exercised the power under Article 142 of the Constitution of India and ordered payment and therefore, that cannot be taken

as precedent to be followed by the High Courts. According to me, the law on this subject has been discussed thoroughly by the Honourable Full Bench of this Court in the judgment reported in 2009(1) TNMAS 1, in the case of Branch Manager, United India Insurance Co. Ltd., Branch Office, Nethaji Bye Pass Road, Dharmapuri Town v. Nagammal others, wherein this Court has held as follows:

31. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:-

(i) The Insurance Policy is required to cover the liability envisaged u/s 147, but wider risk can always be undertaken.

Therefore, as per aforesaid Full Bench judgment of this Court, 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 i.e., the driver or the owner, as the case may be.

14. In this case, on going through the evidence, I am satisfied that the Tribunal has correctly held that the claimants travelled only as unauthorised passengers and they never travelled either as owners or as load-men in the lorry. In the FIR, it has been stated clearly that they travelled as unauthorised passengers and according to the claimants, they travelled as load-men and they have not produced any evidence to prove for whom travelled in the vehicle as load-men in the vehicle. Therefore, it is proved that the claimants travelled in the vehicle as unauthorised passengers and they are not covered by the policy as per Section 147 of the Motor Vehicles Act. Nevertheless, the Honourable Supreme Court in the judgment reported in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , held as follows:

In claims by a third party, there cannot be much doubt that once the liability of the owner is found, the Insurance Company is liable to indemnify the owner, subject of course, to any defence that may be available to it u/s 149(2) of the Act. In a case where the liability is satisfied by Insurance Company in the first instance, it may have recourse to the owner in respect of a claim available in that

...14. It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the Insurance Company cannot be made automatically liable

Therefore, the Honourable Supreme Court made a distinction between a third party and a person, who travelled in the vehicle not as a third party.

15. In that judgment, it has been held that in claims by a third party, the owner is liable and in a case where the liability is satisfied by the Insurance Company in

the first instance, it may have recourse to the owner in respect of claim available on that behalf.

16. Further in the judgment reported in 2008(1) TN MAC 294(SC), in the case of Sardari and Ors. v. Sushil Kumar and Ors., the Honourable Supreme Court confirmed the order of the High Court directing the Insurance Company to pay compensation to all claimants and recover the same by initiating proceedings against the owner.

17. Further, considering the quantum awarded in this case, viz., in MCOP No. 13 a sum of Rs. 69,000/-and in MCOP No. 16, a sum of Rs. 78,000/-awarded and in all other claims, compensation of less than Rs. 7,500/-were awarded and therefore, these civil revision petitions were filed against this award.

18. Hence, considering the principles laid down by the Honourable Full Bench of this Court in the judgment reported in 2009(1)TNMAC 1,inthecase of Branch Manager, United India Insurance Co. Ltd., Branch Office, Nethaji Bye Pass Road, Dharmapuri Town v. Nagammal others and also the Honourable Supreme Court judgment referred to above and considering the quantum of compensation, I do not find any merit to interfere with the award passed by the lower Court and the lower Court has correctly justified in directing the Insurance Company in the first instance and recover the same thereafter from the owner of the vehicle.

19. Hence, the Civil Miscellaneous Appeals and all the Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.