(2012) 09 MAD CK 0247

In the Madras High Court

Case No : C.M.A. No''s. 3327 of 2003 and 242 of 2004

New India Assurance Company Limited, Vellore — APPELLANT

Vs

Thilaga and Others — RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 168, 95

Citation : (2013) 1 ACC 782 : (2012) 7 MLJ 359

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : S. Jayasankar, for the Appellant; T.S. Kannayiram and J. Chandran, for the Respondent

Judgement

Ms. Aruna Jagadeesan, J.—These Civil Miscellaneous Appeals are filed by the New India Assurance Company Limited/4th Respondent before the Tribunal, against the Judgment and Decree dated 22.4.2003 made in M.C.O.P. Nos. 240 and 322 of 1998 by the learned Principal District Judge (MACT) Vellore. Both the claims arise out of the motor accident that had occurred on 20.11.1997, wherein the Van bearing Reg. No. TN-23-B-7273 owned by the 4th Respondent in C.M.A. No. 3327 of 2003 and the 3rd Respondent before the Tribunal and insured with the Appellant New India Assurance Company Limited collided with the bus bearing Reg. No. TN-27-Z-6565 owned by the 2nd Respondent in C.M.A. No. 3327 of 2003/1st before the Tribunal and insured with the 3rd Respondent/ United India Insurance Company Limited.

2. In M.C.O.P. No. 240 of 1998, as against which C.M.A. No. 3327 of 2003 has been filed, the Tribunal awarded Rs. 25,000/- as compensation with 9 per cent interest p.a. to the claimant therein for the injuries sustained by her. In M.C.O.P. No. 322 of 1998, as against which C.M.A. No. 242 of 2004 has been filed, the Tribunal awarded Rs. 2,00,000/- as compensation with 9 per cent interest p.a. to the legal representatives of the deceased Thangavelu, who died in the same accident on account of the injuries sustained by him. The Tribunal held that both

the drivers of the van and the bus were negligent and apportioned liability equally on the Respondents 1 and 2 on one hand and the Respondents 3 and 4 on the other hand.

3. The challenge in both these appeals by the appellant Insurance Company to the impugned award is mainly on the ground that the Insurance Company is not liable to pay compensation to the claimants, since admittedly, the injured and the deceased were travelling in the Van as unauthorized passengers, for which there is no coverage of risk under the Policy and also by virtue of the provisions of the Motor Vehicles Act. In support of the contention that carrying passengers in the good vehicle is prohibited as per the provisions of Section 147 of the Motor Vehicles Act, the learned Counsel for the Appellant placed reliance on the decision of the Honourable Supreme Court National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, wherein it has been held that the Insurance Company is not liable to pay compensation to a gratuitous passenger travelling in a goods vehicle.

4. Reliance was also placed by the learned Counsel for the appellant upon the decisions of the Honourable Supreme Court The National Insurance Company Limited v. Baljit Kaur (2004) ACJ 428 (SC): LNIND 2004 SC 22 : (2004) 1 MLJ 127, New India Assurance Company Limited v. Asha Rani (2003) ACJ 1 (SC) : LNIND 2002 SC 766, New India Assurance Company Limited v. Vedwati (2007) ACJ 1043 (SC) : LNIND 2007 SC 187 : (2007) 3 MLJ 117, National Insurance Company Limited v. Prema Devi (2008) ACJ 1149 (SC) : LNIND 2008 SC 536 : (2008) 5 MLJ 710. In National Insurance Company Limited v. Surat Singh IV (2008) ACC 48, a learned single Judge of the High Court of Delhi, referring to the above said decisions of the Honourable Supreme Court, has held as follows:

The issue involved in the present appeals is no more res Integra, as the Apex Court has taken a view that Section 147 of the Motor Vehicles Act does not envisage coverage of risk of gratuitous passenger and therefore to carry a gratuitous passenger is clearly in violation of terms and conditions of the policy on the part of the owner and consequently no liability to pay the compensation can be fastened on the insurance Company.

5. In this context, it is relevant to refer to the ratio laid down by the Honourable Supreme Court New India Assurance Company Limited v. Vedwati (supra), as follows:

13. The difference in the language of ''goods vehicle as appears in the old Act and ''goods carriage'' in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression ''in addition to passengers'' as contained in definition of ''good vehicle'' in the old Act. The position becomes further clear because the expression used is ''goods carriage'' which is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause

(ii) of the proviso appended to Section 95 of the old Act prescribing requirement of Insurance Policy. Even Section 147 of the Act mandates the compulsory coverage against death of or bodily injury to any passenger of ''public service vehicle''. The proviso makes it further clear that the compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in the goods vehicle would be limited to liability under the Workmen''s Compensation Act, 1923 (in short ''the WC Act''). There is no reference to any passenger in ''goods carriage''.

14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

6. It is to be noted that in Ramesh Kumar Vs. National Insurance Co. Ltd. and Others, it was held that though the vehicle concerned was a good vehicle, yet, the liability of the Insurance Company was not wiped out. This decision was subsequently referred to by a Three-Judge-Bench of the Honourable Supreme Court in New India Assurance Company Limited v. Asha Rani and Others (supra), which was followed in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., . It is, therefore, manifest that in spite of amendment of 1994, the effect of the provisions contained in Section 147 of the Motor Vehicles Act with respect of persons other than the owner of the goods or his authorised representative remains the same, Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of the goods vehicle, it was not the intention of the legislature to provide for the liability of the Insurer with respect to passengers especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

7. In the present case, admittedly, the injured claimant and the deceased Thangavelu were travelling as unauthorized passengers and the evidence of the injured claimant, who was examined as P.W. 3 and the co-passenger, who was examined as P.W. 2, would indicate that they travelled as gratuitous passengers in the Van. Their evidence also indicated that 30 to 40 persons were travelled at the time of the accident as unauthorized passengers. Since the vehicle was a goods vehicle and the owner had not insured the vehicle for carrying passengers in the goods vehicle and the policy indicated that only the driver and certain number of labourers could be carried, there was no scope for carrying any passengers. Taking note of the terms of the policy, I am of the considered view that the insurer was not liable to make payment of compensation and it was the owner who has to make payment of the awarded amount to the claimants.

8. In similar circumstances, in National Insurance Company Limited v. Baljit Kaur (supra), the Honourable Supreme Court directed the Insurance Company to

satisfy the award and thereafter recover the amount from the owner by filing execution application before the Court.

9. Before parting with the judgment of above said appeals, it is essential to refer to the ratio laid down by the Honourable Supreme Court in National Insurance Company Limited v. Baljit Kaur (supra) as under:

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position, which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh, (2000) ACJ 1 (SC). The said decision has been overruled only in New India Assurance Company Limited v. Asha Rani (supra). We therefore are of the opinion that the interest of justice will be subserved if the Appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery it would not be necessary for the Insurer to file a separate suit but it may initiate a proceedings before the Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the Insurer. We have issued the aforementioned directions having regard to the scope and purpose of Section 168 of the Motor Vehicles Act, 1988 in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the Insurer, owner or driver of the vehicle jointly and severally but also the dispute between the Insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

10. Therefore, applying the ration laid down by the Honourable Supreme Court in National Insurance Company Limited v. Baljit Kaur (supra), the Insurance Company can be directed to first satisfy the above mentioned awards and thereafter, recover the amounts from the owner of the vehicle without filing a separate suit. In the result, these civil miscellaneous appeals are disposed of. The appellant Insurance Company is directed to first satisfy the above mentioned awards and thereafter, recover the amounts from the owner of the vehicle. For the purpose of recovering the same from the owner, the Insurer shall not be required to file a suit and it may initiate a proceeding before the concerned Executing Court, as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the Insurer. If necessity arises, the Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the Insurer, In case, there is any default, it shall be open to the Executing Court to direct realization by

disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. No costs.

