(2012) 01 MAD CK 0300

In the Madras High Court

Case No : C.M.A. No. 2188 of 2006

United India Insurance Co. Ltd. — APPELLANT

Vs

Dhamayanthi and Others — RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 2(13)

Citation : (2013) 2 ACC 299

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : N. Mala, for the Appellant; S. Swaminathan, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—This civil miscellaneous appeal has been filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 25.2.2005 made in M.C.O.P. No. 210 of 2001 on the file of Motor Accidents Claims Tribunal, Vellore. Insurance Company is the appellant. Respondent Nos. 1 to 4 and one Devarajan filed a claim petition before Motor Accidents Claims Tribunal, Vellore, claiming compensation for the death of one Dayalamoorthy, the husband of respondent No. 1 and father of the respondent Nos. 2 and 3 who died in a road accident on 17.1.1998.

2. According to claimants, on 17.1.1998, one Vallammal of Chinnathellur village of Vellore died at Bangalore and her body was transported in a van bearing registration No. KA 07-1764 with the consent of the owner of the van and the said Dayalamoorthy and others assisted in transporting the dead body of Vallammal and travelled along with it in the van. After the funeral ceremonies were over, the deceased and others who were engaged in transporting the dead body returned back in the same van.

3. On 17.1.1998 around 9.30 p.m., the driver of the van was trying to overtake a stationary lorry. At that time, a bus bearing registration No. TN 29-N 0901 was

coming from the opposite direction. Both the van and the bus collided with each other and in that accident the said Dayalamoorthy died. He was the only bread winner of the family and was earning more than Rs. 9,000 per month as mechanical assistant in a private company and, therefore, a claim was made for a sum of Rs. 10,00,000 from the owner and the insurer of the van as well as the Managing Director of the State Transport Corporation.

4. The claim was contested by the insurance company as well as the State Transport Corporation. The Insurance Company took a defence that the said Dayalamoorthy was an unauthorised passenger in a goods vehicle and, therefore, denied the claim. It was also submitted that the vehicle was used for a purpose other than the purpose for which it was permitted as it was transporting a dead body.

5. The Transport Corporation contested the claim on the basis of negligence on the part of driver of the van.

6. Before the Motor Accidents Claims Tribunal, Vellore, two witnesses were examined on the side of the claimants and five documents were marked. On the side of the respondents the investigator of the insurance company was examined along with one office assistant. Five documents were marked.

7. The driver of the Corporation was also examined as RW 2. On the basis of the oral and documentary evidence, the Tribunal found that the accident was due to head-on collision and, therefore, it had occurred on account of contributory negligence of both the drivers, i.e., of the van as well as of the bus of the Corporation and directed the insurance company as well as the State Corporation to pay the damages equally.

8. While considering the compensation, the Tribunal has granted a sum of Rs. 6,30,000 to the claimants. Aggrieved by fixing of the liability on the insurance company, the insurance company has preferred the present appeal.

9. The only ground raised by the insurance company is that the deceased was a non-fare paying passenger who travelled in a goods vehicle. Therefore, the insurance company is not liable.

10. Reiterating the said argument, Ms. N. Mala, the learned Counsel for the appellant insurance company, submitted that even according to the claimants, the deceased was travelling in a goods vehicle, which was not permitted to carry a dead body as a mortuary van and, therefore, for a non-fare paying passenger, the insurance company is not liable to pay compensation. The learned Counsel relied on a decision reported in Kalavathy Vs. Annammal and Others, wherein the Division Bench of this Court has held thus:

(4)...It is clear that an owner of a passenger carrying vehicle must pay the premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. In the absence of additional premium for covering the risks of the deceased who was travelling in the lorry and in view of overruling of the decision in New India Assurance Company Vs. Shri Satpal Singh and Others, we hold that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative being carried in a goods vehicle when the said vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury. In the light of the said pronouncement of the Apex Court, we confirm the conclusion arrived at by the Tribunal.

11. On behalf of the claimants, there is no representation. Mr. S.S. Swaminathan, learned Counsel, appeared for respondent No. 8, the State Transport Corporation, against whom liability to meet 50 per cent of the award was passed.

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

13. The only point to be considered is whether the deceased was a non-fare paying passenger and whether there is breach of policy condition for using the goods vehicle to transport a dead body.

14. The coverage of non-fare paying passenger in a goods vehicle has already been settled in many case-laws. If the policy of the insurance is comprehensive and covers the non-fare paying passenger in a goods vehicle, who travels along with the goods, then the insurance company is liable.

15. Exh. R5 is the copy of the policy which is a ''B'' policy, i.e., a comprehensive policy. Apart from the own damages, the policy covers liability to public risk, i.e., third party risk. In addition to that, a legal liability to non-fare paying passengers is included as per Endorsement No. 14. There is also an additional premium paid for legal liability to persons in connection with operation of loading and unloading. Therefore, a person, who is a coolie or a loadman, is also covered.

16. It is a categorical statement of the claimants that the deceased had travelled in a goods vehicle for loading and unloading of a dead body and after unloading such dead body, when the deceased was returning back, the accident took place.

17. Exh. R2 is a Goods Carriage Permit produced by the owner according to which the nature of goods that could be carried are ''all types of goods except prohibited''. Section 2(13) of the Motor Vehicles Act, 1988 defines the term ''goods'' as: "Goods includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried in a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of a passenger travelling in the vehicle". Therefore, living person is not a ''goods'' but a dead person if transported becomes a ''cargo''. There is also no prohibition to transport a dead body in a goods vehicle. There is no law that a dead body should always be carried in an ambulance or a mortuary van.

18. Therefore, carrying a dead body in a goods vehicle is also covered within the

meaning of a goods vehicle used in carriage of goods and the deceased was a coolie/loadman, for whom there was premium paid for the coverage and, therefore, the insurance company is liable to indemnify the insured.

19. In the result, the appeal is dismissed and the judgment and decree dated 25.2.2005 made in M.C.O.P. No. 210 of 2001 on the file of the Motor Accidents Claims Tribunal, Vellore are confirmed. This Court had by an order dated 18.8.2006 in C.M.P. No. 8956 of 2006, directed the insurance company to deposit 50 per cent of the award amount. The insurance company is directed to deposit the balance award amount to the credit of M.C.O.P. No. 210 of 2001 and on such deposit, the claimants are entitled to withdraw the amount.