(2016) 08 MAD CK 0010

In the Madras High Court

Case No : C.M.A.(MD)No. 96 of 2005

United India Insurance Company Limited, Kovilpatti — APPELLANT

Vs

Atchiammal — RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2017) 1 AnWR 179

Hon'ble Judges : Mr. K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : Mr. J.S. Murali, Advocate, for the Appellant; Mr. N. Roofus Abraham, Advocate, for the Respondent No. 6

Final Decision : Allowed

Judgement

Mr. K. Kalyanasundaram, J.—Aggrieved over the award passed by the Motor Accident Claims Tribunal/Sub Judge, Sankarankovil, passed in M.C.O.P. No.15 of 2001, dated 21.01.2002, the appellant Insurance Company has preferred this appeal.

2. The respondents 1 to 4 approached the Tribunal seeking compensation of Rs.2 lakhs for the death of Puludaiyar Konar, in a motor vehicle accident, occurred on 15.08.1997.

3. The case of the claimants is that on 15.08.1997, the deceased along with 50 other persons travelled in a van bearing Reg. No. TN-69-1373 to participate in the 238th Anniversary of Veeran Alagumuthukon. The driver drove the van in a rash and negligent manner and hit against the bus, which is coming from opposite direction. In the impact, the deceased died on the spot and a case in Crime No.471 of 1997 was registered against the driver of the van by the Kovilpatti West Police Station under Section 279, 337, 338 and 304-A of IPC.

4. The appellant opposed the claim petition stating that the vehicle TN-67-1373 is a goods carriage and it is permitted to use only for transportation of goods but

on the date of accident 50 un-authorised passengers were travelled in the vehicle. Further, he stated that the accident had happened due to the overloading of the vehicle. Since, the insured had violated the policy condition, they are not liable to pay any amount towards compensation and also they disputed their liability.

5. The Tribunal, upon consideration of oral and documentary evidence, awarded Rs.2,29,000/- along with interest at the rate of 9% per annum. Against that order, present appeal is filed.

6. Heard both sides and perused the records.

7. Mr. J.S. Murali, learned counsel appearing for the appellant would submit that even according to the claimants, the goods vehicle was used for transportation of the passengers, so they should be considered as un-authorised passengers travelling in a goods vehicle. He further relying upon the decisions reported in 2008 (1) TNMAC 348, 2008 (2) TNMAC 332 and 2011 ACJ 326 would submit that the liability fastened on the appellant has to be set aside.

8. In 2008 (1) TNMAC 348(SC), the Hon''ble Apex Court has held that the provisions of the motor vehicles Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passengers travelling in a goods carriage. Therefore, the insurer would not be liable to pay compensation. In paragraph Nos.13, 14 and 15, the Hon''ble Apex Court has held as follows :

"13. The difference in the language of "goods vehicle"as appear 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 fro 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 "good carriage" 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 compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The Proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen''s Compensation Act, 1923 (in short "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 therefor.

15. Our view gets support from a recent decision of a Three-Jude Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors., 2004

(2)TN MAC 387 (SC) : 2002 (8) Supreme 594, in which it has been held that Satpal Singh''s case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the Insurer had the liability to satisfy the award."

9. The Himachal Pradesh High Court, in 2011 ACJ 326 following the decisions of the Hon''ble Apex Court in Kousalaya Devi''s case reported in 2008 ACJ 2144 (SC), in paragraph Nos. 17, 18 and 19, has held as follows :

"17. On the other hand, in Kaushalaya Devi''s case, 2008 ACJ 2144 (SC), the Apex Court has set aside the directions given by this Court directing the insurance company to deposit the amount. It specifically held that if the amount had not been withdrawn by respondent No.1, it would be refunded to the insurance company and the claimant would recover the amount from the owner of the vehicle. This is the latest judgment cited before me and I am bound by the same.

18. In view of the above discussion, I am of the considered opinion that only the owner can be held liable to pay the award amount and this Court has no power to direct the insurance company to satisfy the award. Consequently, I am of the considered view that the award of the learned Tribunal insofar as it holds the insurance company liable to pay the compensation has to be set aside.

19. The appeal filed by the insurance company is accordingly allowed and the appeal filed by the owner is dismissed. It is, however, clarified that in case any amount has already been paid to the claimants out of the amount deposited by the insurance company, then the insurance company shall not recover the same from the claimants, but shall recover the same from the owner of the vehicle."

10. In the instant case, RW2 deposed that the offending vehicle was insured as goods vehicle and it has to be used only for transportation of the goods, however, in contravention of the policy condition, un-authorised passengers travelled at the time of accident. As already stated, even in the claim petition, it is admitted that at the time of accident more than 50 persons travelled in the goods vehicle. However, the Tribunal fastened the liability on the appellant insurance company by observing that though it was alleged in the counter that due to over loaded the vehicle capsized, PW2 has not stated so in his evidence.

11. In my considered view, the appellant has established the fact that un-authorised passengers travelled in the goods vehicle at the time of accident and the decisions cited Supra, squarely apply to the facts of the case. Hence, the award of the Tribunal insofar as fastening liability on the appellant insurance company to pay compensation is set aside. The Civil Miscellaneous Appeal is accordingly allowed. No Costs.

12. However, it is made clear that in case, any amount has been paid to the claimant, out of the amount deposited by the insurance company, the insurance company shall not recover the same from the claimants, but the insurance

company shall recover the same from the owner of the goods vehicle. The Tribunal shall permit the appellant to withdraw the amount lying to the credit of the claim petition, if any.

