

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/01/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

C.M.A. No. 456 of 1997

Kalavathy .. Appellant/1st Respondent.

-Vs-

1. Annammal,
2. Kanaka,
3. Neelambal,
4. Duraiammal,
5. Ramalingam,
6. Shanthi, .. Petitioners.
7. The United India Insurance
Company Limited,
Divisional Office, 730, Mount Road,
Madras-6.
.. 2nd Respondent.
.. Respondents.

Appeal against Judgement and decree dated 20-11-1996 and made in M.C.O.P.No. 1134 of 1994, on the file of Motor Accidents Claims Tribunal (Prl. District Judge) Tiruvannamalai.

For Appellant : Mr. T.M. Venkataraman for
Mr.T. Chandrasekaran

For 7th Respondent : Mrs. Radhika Krishna

No appearance:- For Respondents 1 to 6.

:JUDGMENT

(Judgment of the Court was made by P. Sathasivam, J.,)

First respondent in M.A.C.T. O.P.No. 1134 of 1994 on the file of Motor Accidents Claims Tribunal, Tiruvannamalai, owner of lorry bearing registration No. KA03 3614 which involved in the accident is the appellant in the above appeal. In respect of death of one Thoppai Konar in a road accident that took place on 24-2-94, his wife, daughters and son have prayed for a compensation

of Rs.1,50,000/-. Before the Tribunal, 5th claimant, son of the deceased was examined as P.W.1 and one Renu as P.W.2 besides marking Exs. P-1 to P-3 in support of their claim. On the side of the Insurance Company, 2nd respondent therein, their Officers were examined as R.Ws.1 and 2 and they also marked Exs. R-1 to R-13 in support of their defence. The Tribunal on appreciation of evidence, both oral and documentary, after holding that the accident was caused due to the negligence of the driver of the lorry in question, passed an award for Rs.51,000/- and directed the first respondent therein/appellant herein, owner of the vehicle to pay the said amount. Questioning the said award, the appellant/ owner has preferred the present appeal.

2. Heard Mr. T.M. Venkataraman, learned counsel for the appellant-owner of the lorry and Mrs. Radhika Krishnan, learned counsel for the contesting 7th respondent □ United India Insurance company.

3. Even at the foremost, learned counsel appearing for the appellant submits that the Tribunal, instead of passing an award against the Insurance company, directed the owner of the vehicle to pay the compensation. In such a circumstance, there is no need to refer the factual details relating to negligence and quantum of compensation arrived at by the Tribunal.

4. It is seen that on 24-12-94 while the deceased Thoppai Konar was travelling in the lorry bearing registration No. KA 03 3 614 along with 31 paddy bags, it met with an accident, thereby he fell down and sustained fatal injuries. His wife and children are the claimants. It is also their case that since the lorry, which belongs to the appellant herein, was insured with the 7th respondent Insurance company, both are liable to pay compensation. There is no dispute that the lorry bearing registration No.KA 03 3514 was insured with the 7th respondent herein. The Insurance Company examined their Officers as R.Ws.1 and 2 through whom, besides permit and other documents relating to the lorry, copy of the policy has been marked as Ex.B-12, and tariff details in respect of extra benefits as Ex.B-11. A perusal of the details, particularly Exs. B-11 and B-12 coupled with the oral evidence of R.Ws.1 and 2 would clearly show that except third party insurance and premium for driver and cleaner, no additional premium was paid for others. In other words, according to Ex. B-12, no additional payment of premium was paid for non-fair passenger. Though an amount of Rs.30/- was paid, as shown in clause 17 of the policy, as properly explained and rightly accepted by the Tribunal, the said amount relates to the driver and cleaner of the lorry and not to non-fair passengers. Admittedly, the accident had occurred on 24-2-94. There is no dispute that on the relevant date, there was no necessity for the insurance company to cover the risk in respect of persons travelling in the goods vehicle or non-fair paying passengers. In other words, prior to the amendment of 1994 in the Motor Vehicles Act, 1988, it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. In the absence of any additional premium in Ex. B-12, we are of the view that the Tribunal is fully justified in exonerating the insurance company from its liability and fastening the entire liability in favour of the owner of the vehicle, namely, appellant herein. In this regard, it is useful to refer a latest decision of

the Supreme Court in *New India Assurance Co. Ltd., v. Asha Ran*, reported in 2003 (Vol.1) ACJ 1. The question that was decided in those appeals was, whether the insurer is liable to pay compensation to the dependants of the deceased passengers, while the deceased passengers were travelling in a goods vehicle and that vehicle met with an accident, on account of which the passengers either died or suffered bodily injury. In that case before the Tribunal, it was contended on behalf of the insurer that the insurer would not be liable to pay compensation for the death of the deceased who was going in a goods vehicle and met with death on account of an accident. The Tribunal, however, came to the conclusion that in view of the decision of the Supreme Court in the case of *Mallawwa v. Oriental Insurance Co., Ltd.*, 1999 ACJ 1 (SC), the insurer must be held liable and accordingly directed the compensation amount to be paid by the insurance company. The insured carried an appeal to the High Court, but the High Court disposed of the appeal solely on the ground that the case is covered by the decision of the Supreme Court in the case of *New India Assurance Co., Ltd., v. Satpal Singh*, 2000 ACJ 1 (SC). After considering the relevant provisions prior to its amendment in 1994 in the Motor Vehicles Act, 1988 as well as *Mallawwa's* case (sited *supra*) and *Satpal Singh's* case (cited *supra*), the three Judge Bench held thus: (para 9)

"9. In *Satpal's* case, 2000 ACJ 1 (SC), the court assumed that the provisions of section 95 (1) of Motor Vehicles Act, 1939, are identical with section 147 (1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly section 46 of Act 54 of 1994 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person, including owner of the goods or his authorised representative carried in the vehicle' the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of section 46 also states that it seeks to amend section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that some times the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand, it clearly demonstrates that the legislature

wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this court in Satpal's case, therefore, must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."

It is clear that an owner of a passenger carrying vehicle must pay 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 the Satpal Singh's case (cited supra), 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 Supreme Court, we confirm the conclusion arrived at by the Tribunal.

5. Learned counsel appearing for the 7th respondent Insurance Company by drawing our attention to Rule 238 of Tamil Nadu Motor Vehicles Rules, 1989, would point out that no one is permitted to travel in goods carriage since such permission would lead to falling him from the vehicle. He also points out that since the deceased travelled in goods carriage, he fell down and met with a fatal accident; hence the Insurance Company is not liable to pay compensation on behalf of the owner of the vehicle. The relevant rule, namely, Rule 238 reads as under:-

Rule 238. Prohibition of persons on the top of goods carriage.- No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in case shall any person be carried in a goods carriage in such a manner that any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests."

The above rule prohibits carrying persons in a goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle. We have already found that the materials placed before the Tribunal clearly show that the deceased was one among the other persons on being carried in a goods vehicle along with the paddy bags. Considering the conduct of the deceased and also the fact that the owner and the driver had permitted the deceased to travel in the goods carriage which ultimately met with the accident, we are of the view that the action of the owner and the driver is nothing but in violation of the above mentioned Rule. Thus, they

are liable for action for breach of statutory provision namely Rule 238 of the Tamil Nadu Motor Vehicles Rules.

6. In the light of what is stated above and in view of the fact that the deceased travelled in a goods vehicle, which is contrary to the statutory provision of Rule 238 and also of the fact that no additional premium was paid to cover the risk of non-fair passengers and also in the light of the legal position as it stood prior to the amendment in 1994, we sustain the objection raised by the Insurance Company. The same was rightly accepted by the Tribunal by directing the owner-appellant herein to pay the compensation amount to the claimants. We do not find any merit in the appeal; consequently the same is dismissed. No costs.

R.B.

Index:- Yes.

Internet:- Yes

To:-

1. The Motor Accidents Claims Tribunal (Pr. District Judge)
Tiruvannamalai.

2. The Record Keeper, V.R. Section, High Court, Madras

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