The Branch Manager Vs. Geetha and ors.

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Court : Chennai

Decided On : Mar-20-2012

Judge : Aruna Jagadeesan, J.

Acts : Indian Penal Code (IPC) - Sections 304A; Motor Vehicles Act - Section 147(1)(i), 149; A.P Motor Vehicles Rules - Rules 277(3), 252, 236

Appeal No. : CMA.Nos.4275/2005 and 3619 of 2006; CMP.Nos.20781 of 2005 and 10770 of 2006

Appellant : The Branch Manager.

Respondent : Geetha and ors.

Advocate for Pet/Ap. : Mr.S.Arunkumar, Adv.

Judgement :

Prayer:- These Civil Miscellaneous Appeals are filed against the award and Decree dated 12.02.2004 made in MCOP.Nos.435/2001 and 9/2002 by the learned Sub Judge (MACT) Krishnagiri.

JUDGEMENT

1. These Civil Miscellaneous Appeals are filed by the National Insurance Company Limited, Hyderabad, against the award and Decree dated 12.02.2004 made in MCOP.Nos.435/2001 and 9/2002 by the learned Sub Judge (MACT) Krishnagiri.

2. The short facts which are necessary for the disposal of these appeals, are as follows:-

The deceased G.Ramesh in MCOP.No.435/2001 and the deceased B.C.Ravikumar in MCOP.No.9/2002 travelled with their goods, namely, textile goods in the Lorry bearing Reg.No.AP-11-T-9027 owned by the 4th Respondent in CMA.No.4275/2005, who is the 1st Respondent in the claim petitions and insured with the Appellant Insurance Company, who is the 2nd Respondent in the claim petitions, to go back to Hyderabad in the capacity as the owners of the said goods. The said lorry was driven by its driver Gajjala @ Narsimmalu and at about 3.30 p.m. while the lorry was proceeding in NH7 Highways towards Hyderabad from Karnool, near Tirumala Textiles, the said lorry toppled down on the road on account of the rash and negligent driving of its driver. Due to the said impact, both the deceased, who were travelling in the lorry along with their goods, sustained fatal injuries. The Shadnagar Police had registered a case against the driver of the lorry in Cr.No.96/2001 under Section 304A of IPC. Therefore, the legal representatives of both the deceased have filed the above claim petitions for compensation. After analysing the evidence, the Tribunal accepted the contention of the claimants that the accident had occurred because of the negligent driving of the driver of the lorry and awarded a sum of Rs.5,81,500/- as total compensation to the claimants in MCOP.No.435/2001 and Rs.6,01,500/- as total compensation to the claimants in MCOP.No.9/2002 with interest at 9 per cent p.a. from the date of the claim petition till the date of realization and directed the 1st Respondent in the claim petition and Appellant Insurance Company to pay compensation jointly and severally and further directed the Appellant to deposit the award amount. As against the same, the Appellant Insurance Company has filed these appeals, contending that the policy does not cover the risk of unauthorised passengers, namely, the deceased in both the claim petitions and sought for exoneration of the liability.

3. Admittedly, the lorry was insured with the Appellant Insurance Company. The Appellant resisted the claims of the claimants on the ground that the deceased persons were not the owners of the goods or the representatives of the owner of the goods and they have travelled as gratuitous passengers. As they were

travelling as unauthorised passengers in the goods vehicle, the Insurance Company is not liable to pay compensation. It is contended by Mr.S.Arunkumar, the learned counsel for the Appellant Insurance Company that the Tribunal's appreciation of evidence is contrary to law laid down in various decisions of the Honourable Supreme Court as well as this court. The learned counsel would point out that even in the counter, they have denied that the deceased persons were travelling as the owners of the goods being transported in the lorry.

4. While considering the question whether the deceased were travelling in the lorry as the owners of the goods being transported in the vehicle, the Tribunal, on the basis of Ex.P1 First Information Report and Ex.P4 ad Ex.P6 receipts evidencing purchase of textile goods and the evidence of PW.3, who also travelled along with the deceased, held that the deceased were travelling along with the goods transported in the lorry and it was further held that the Insurance Company with which the lorry was insured was liable to pay compensation in view of the liability under Section 147(1)(i) of the Motor Vehicles Act. The findings of the Tribunal regarding the liability fastened on the Insurance Company is challenged in these appeals by the Appellant Insurance Company.

5. Ex.P4 and Ex.P6 receipts show that the claimants have purchased goods from Sri Venkateswara Textiles in Karnool District. The averments made in Ex.P1 First Information Report also indicated that the deceased were transporting the textile goods in the lorry which met with the accident. PW.3, who is a co-passenger and who also travelled in the offending lorry along with the goods transported in the lorry, has stated that the deceased persons and himself travelled in the lorry along with their goods. His evidence indicated that he travelled in the cabin with the driver. Appreciating the evidence adduced as aforesaid, the Tribunal came to the conclusion that the deceased travelled in the lorry along with their goods at the time of the accident and they were not gratuitous passengers. There is no reason to disbelieve the same and as against this, the Insurance Company having raised contention about gratuitous passengers failed to produce any contra evidence and not examined any witness to disprove the case of the claimants. Considering the evidence as a whole and the documents exhibited by the claimants, it is clear that the deceased were not gratuitous passengers, but they had travelled along with

their goods.

6. The evidence of PW.3 and the averments made in the First Information Report clearly disclosed that the deceased were travelling along with their goods after paying fare to the Driver of the vehicle. The denial on the side of the Insurance Company being a vague denial in the counter and as there is no evidence on record to cull out anything contrary to the statement of PW.3, who also travelled along with his textile bundle, the nature of journey in the aforesaid circumstances cannot be doubted and it has to be held that those small textile merchants were travelling in the lorry on the fateful day along with their goods and in such circumstances, they cannot be termed to be gratuitous passengers. But, in fact, they were bona fide passengers travelling along with their goods.

7. Section 147(1(b)(i) of the Motor Vehicles Act deals with the liability of the Insurer to pay compensation against any liability which may be incurred in respect of death of or bodily injury to any person including the owner of the goods or his authorised representative carried in the vehicle. The above liability of the Insurer in respect of any person including the owner of the goods in a goods vehicle was incorporated in the act through an amendment in Act 54/1994 with effect from 14.11.1994. Though the Appellant contended that the deceased were not the owners of the goods, they have not adduced any evidence to substantiate its contention. Therefore, in the absence of any contra evidence adduced by the Appellant, the finding of the Tribunal in this regard is liable to be confirmed.

8. Now, the question that arises for consideration is as to whether the Insurance Company is liable to pay compensation

9. The learned counsel for the Appellant Insurance Company drew the attention of this court to the recent decision of the Honourable Supreme Court reported in National Insurance Co. Limited Vs. Cholletti Bharatamma (2008-ACJ-268-SC) wherein the Honourable Supreme Court held that the Insurance Company even in respect of the owner of the goods is only liable if such owner travels in the cabin of the truck and not if he is travelling in the rear of the truck. Reference may be made to those portions of the decision wherein the Honourable Supreme Court held as follows:- 17. It is now well settled that the owner of the goods means only the

person who travels in the cabin of the vehicle.

18. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the Respondents themselves was that the deceased had boarded the lorry and paid an amount of Rs.20 as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act.

20. The accident in this case took place on 3.1.1991. Twenty persons were travelling in the truck. The policy covered the risk only of the owner of the goods. Before the learned Tribunal,it was contended that the risk of the owners of the goods is covered by the policy. It was held:-

On a careful consideration of the various authorities cited by the learned counsel for both the parties, Sections 147, 149, Rules 277(3) and 252 of Rules framed under Motor Vehicles Act. I have no hesitation to conclude that the risk of the owner of the goods is also covered by the policy issued by the Insurance Companies, from the evidence of RW.1 who is no other than the employee of 2nd Respondent as well as terms of Ex.B2 Policy it is obvious that the risk of the owner of the goods is covered, but it is restricted only to one person as owner of the goods. Thus, there can be no doubt that the owner of the goods can travel in the goods vehicle and if they are involved in the accident, their risk is covered subject to the terms and conditions of the policy issued by the Insurance Companies.

21. The learned Tribunal, however, noticed:-

Thus, the claim form corroborate the testimony of the petitioners that the deceased or the injured as the case may be travelled in the vehicle as owner of goods. But, it is mentioned in Ex.B3 claim form as well as in Ex.B1 permit that the seating capacity of the lorry is only (3) including driver and cleaner which would go to show that only one passenger can travel in it.

22. Upon considering the evidences on record, it was held:-

As the permitted seating capacity of the lorry is only (3) including the driver and cleaner and as only one non fare paying passenger as owner of goods can travel in the cabin and as the deceased has admittedly travelled in the cabin beyond seating capacity and contrary to the terms of the permit as well as Rule 252(2) of the Motor Vehicles Act. I am of the view that 2nd Respondent cannot be fastened with the liability to pay compensation along with 1st Respondent to al the injured and legal representatives of the deceased. At best it is liable to pay compensation jointly and severally along with the 1st Respondent only in respect of one non-fare paying passenger who is the owner of the goods. As per the endorsement I.M.T 14(c) unless additional premium is paid for the number of persons who travelled in the lorry, as owners. I am of the view that 2nd Respondent cannot be fastened with liability. Further all the petitioners and deceased cannot be deemed to have travelled as owners of the paddy as the paddy is said to be in bags and orally kept in loose in the lorry and it is enough if any of them have travelled in the lorry on behalf of all, as owner of the lorry Rule 277(3) of A.P Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only persons, who are permitted to carry in goods vehicles are the owner of hirer or bona fide employee of owner of hirer and total number of such persons, who could be carried in goods vehicles is not more than seven including the driver. As per Rule 252(2) person shall be carried in the cab of the vehicle beyond the seating capacity as per Clause (2). No person shall be carried on the load or otherwise. Rule 4 empowers the RTA to allow large number of persons to be carried. As the seating capacity of the lorry is only (3) as per Ex.B1 and Ex.B3 and as the risk of only owner of goods is covered by Ex.B2 policy, whereas about 40 to 42 persons travelled in the lorry by sitting on the load, which is not permitted carriage of more than seating capacity but on the other hand the permit is cancelled. I am in agreement with the contention of the learned counsel for the Respondent that it cannot be fastened with the liability for compensation.

23. The High Court, however, dismissed the appeals preferred by the Respondents relying upon Satpal Singh (supra). Submission of the learned counsel appearing on behalf of the Respondent is that within the aforementioned twenty persons, it is the Respondents having preferred an appeal, this Court

should hold that at least the claimants- Respondents are entitled to compensation as the deceased was travelling as owner of the goods. The learned Tribunal discussed the matter in great details. It is not in dispute that premium has been paid only for one person.

24. In the facts and circumstances of this case, we are of the opinion that the contention of the Respondent should be accepted. This appeal is, thus, dismissed.

10. Now the question that arises for consideration is whether the liability of the Insurance Company could be avoided in respect of claim of the deceased passengers who travelled along with their goods. The position of law is settled now after pronouncement of the Honourable Supreme Court in National Insurance Company Limited Vs. Cholleti Bharatamma and others (2008-1-SCC-423). The Honourable Supreme Court observed that it was necessary to show that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. It further observed that travelling with the goods itself does not entitle anyone to protection under Section 147 of the Act. In paragraphs 17, 19 and 20, the Honourable Supreme Court held that the owner of the goods means only the person who travels in the cabin of the vehicle. In paragraphs 22 to 24, the Honourable Supreme Court explained that the policy covered the risk only of the owner of the goods. All the petitioners and the deceased cannot be deemed to have travelled as owners of the paddy as the paddy was said to be in bags. It is enough if any one of the had travelled in the lorry on behalf of all, as owner of the goods. Therefore, the Honourable Supreme Court observed that the owner of the goods if there was necessity to travel should travel in the cabin of the vehicle and not with the goods so as to be covered under Section 147 of the Motor Vehicles Act.

11. In the present case, though the goods transported were cloth bundles, but each one of them had independently purchased and those deceased have travelled in the lorry after paying fare for transporting those goods. It is not the case of the Insurance Company that there was sufficient space in the cabin to accommodate the owner of the goods. According to the claimants, for protection of the goods, there was necessity for them to travel along with the goods. At this

juncture, it is relevant to refer to the Rules 236 of the Tamil Nadu Motor Vehicles Rules, which deals about the limit of persons in goods carriage. It reads as follows:- 236. Limit of persons in goods carriage:- No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage.

12. But, in this case, no evidence adduced by the Insurance Company that the cabin of the offending lorry could accommodate some more persons and the owner of the goods ought to have travelled in the cabin.

13. In New India Insurance Co. Limited Vs. Darshana Devi (2008-7-SCC-416) the deceased owner of the goods was travelling on the mud guard of the tractor loaded with 'safeda' wood. Due to rash and negligence driving by the offending driver who did not have a valid driving licence, the deceased fell down and came underneath the said tractor. The tractor used to be plied on hire. At the relevant time, it was not being used for agricultural purposes for which it was insured. The Tribunal held that although the owners had contravened the contract of insurance, the Insurance Company could not escape its liability in regard to third party risk, but was entitled to recover the amount of compensation from the insured, namely, the owner of the offending vehicle after paying the compensation to the claimants. Against this, the Division Bench of the High Court dismissed the appeal preferred by the Insurance Company summarily. In the appeal preferred by the Insurance Company to the Apex court, The Honourable Supreme Court dismissed the appeal and held thus:- With effect from 14.11.1994, injury to the owner of the goods or his authorised representative carried in the vehicle was also added. It is Section 147 of the Motor Vehicles Act that sets out the requirement of policies and limits of liability. The liability of an insurance company to recompense the owner and driver of a vehicle, who are primarily responsible for payment of compensation to a victim or dependant of a deceased arising out of use of a motor vehicle, is statutory in nature. Whereas an owner of a motor vehicle is under a statutory obligation to get it compulsorily insured, the defence of an insurance Company is limited. The aforementioned principle is reiterated in United India Insurance Co. Vs. Suresh KK

(2008-12-SCC-657) .

14. By applying the said principles to the facts of the case, admittedly the deceased were travelling with their goods in order to protect it after paying fare to the driver. The driver having allowed them to travel with their goods, the owner would become liable. The liability of the Insurance Company to recompense the owner and the driver of the vehicle who are primarily responsible for payment of compensation to a victim or dependant of the deceased arising out of use of a motor vehicle is statutory in nature. Therefore, the Insurance Company can be directed to pay the awarded amount to the claimants and recover the same from the owner or the driver.

15. In the result, these Civil Miscellaneous Appeals are disposed of to the extent mentioned above. The Appellant Insurance Company is directed to pay the awarded amount to the claimants with interest as awarded by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the owner or the driver of the offending vehicle without there being a necessity to file a suit, but initiate execution proceedings and recover the amount in accordance with law. No costs. Consequently, the connected MPs are closed.