IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

C.M.A.No.3689 of 2010
and M.P.No.1 of 2010

Bajaj Allianz General Insurance
Company Ltd., rep. by its
Branch Manager,
No.24, 25, Prince Towers,
College Road, T.Nagar,
Chennai. ... Appellant

vs.

1.Ramalingam
2.Boopalan ... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award dated 17.8.2010 made in M.C.O.P.No.1091 of 2008 on the file of the Motor Accidents Claims Tribunal, (III Additional District Judge) (Presiding Officer) at Pondicherry.

For Appellant : Mrs.Sreevidya

For Respondents : Mrs.A.S.Bharathi,
for R.1
R.2 - exparte.

JUDGMENT

The second respondent insurance company is the appellant herein.

2. The present appeal is filed by the insurance company against the award of compensation of Rs.3,30,000/- to the injured claimant.

3. The only ground herein is that the claimant travelled in the goods carrying auto as a gratuitous passenger and the seating capacity of the auto is only one and there is violation of policy condition and since the policy condition is violated by allowing a gratuitous passenger to travel in the vehicle, the insurance company is not liable to indemnify the owner for the injuries sustained by the gratuitous passenger. The claimant by name Ramalingam, in the

claim petition, categorically stated that he was travelling in the load carrier along with his goods i.e., Mosaic machine and building materials at the time of accident and while they were passing through Lawspet Main Road from North to South direction near Kokku Park Signal, the accident occurred. The second respondent insurance company, in his counter, denied that the claimant travelled in the vehicle as owner of the goods and according to the second respondent insurance company, the claimant was only a gratuitous passenger, who travelled in the vehicle in wilful breach of the policy condition.

4. During trial, the injured claimant as P.W.1 in the witness box, specifically deposed that he travelled along with the goods belonging to him. It is also stated so in Ex.P.1-First Information Report. As against the oral evidence of P.W.1 and the averments made in the complaint to that effect, the second respondent insurance company produced Ex.R.3-claim petition submitted by the owner Boopalan to the insurance company. Curiously, no particulars were furnished in the claim form about the nature of the goods carried at the time of accident and the number of people travelled and the capacity in which they travelled in the vehicle at the time of accident. The relevant column (4) in the claim petition remained unfilled and absolutely, there is no explanation from the insurance company for not obtaining the relevant particulars in the claim form in this regard. Further, the second respondent insurance company has also produced Ex.R.4, a letter purported to be sent by Driver Shankar to the insurance company regarding the accident. Though the Driver is the competent person to speak about the capacity in which the claimant travelled in the vehicle, the letter sent by the Driver is conspicuously silent in this regard. Thus, as rightly found by the Tribunal, the specific case of the claimant regarding the capacity in which he travelled in the vehicle along with his goods remained uncontroverted. The second respondent insurance company could have easily disputed the same by summoning the owner and the driver of the vehicle insured with them and the failure to do so remained unexplained. Having failed to do so, the second respondent insurance company cannot be permitted to deny the ownership of the goods carried in the vehicle and to treat the claimant as a gratuitous passenger so as to deny their liability to indemnify the owner. The objection so raised on the side of the insurance company is for want of proper evidence, liable to be rejected. The insurance company is not able to make out any other reason warranting interference of the impugned award on facts.

5. In the result, the civil miscellaneous appeal is dismissed. The Insurance Company is directed to deposit the entire compensation amount with interest at 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, that has already been deposited, to the credit of M.C.O.P.No.1091 of 2008 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge) (Presiding Officer) at Pondicherry, within a period of four weeks from the date of receipt of a copy of this order. On

such deposit, the claimant is permitted to withdraw the entire amount, with the accrued interest and costs, less the amount, if any, that has already been withdrawn by him, by filing cheque petition. No costs. Consequently, connected miscellaneous petition is closed.

sbi

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Presiding Officer/ III Additional District Judge,
Motor Accidents Claims Tribunal,
Pondicherry.

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

+ 1 cc to Mr.V.S.Kesavan, Advocate SR 42839

+ 1 cc to M/s.R.Sree Vidhya Advocate SR 42528

vsn(co)
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