

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A.No.429 of 2010

S.Rajaram

.. Appellant

vs

1. S.P.Raja

2. The New India Assurance Co.Ltd.

Kumaran Shopping Complex

Kumaran Road, Tiruppur Taluk

Coimbatore District.

... Respondents

Civil Miscellaneous Appeal against the judgment and award dated 27.07.2009 passed by the learned Additional District Judge, Fast Track Court No.I (Motor Accident Claims Tribunal), Erode in M.C.O.P.No.252 of 2007.

For Appellant ... Mr.N.Manokaran

For Respondent 2 ... Mr.C.Ramesh Babu

R1 ... No appearance

JUDGMENT

The claimant is the appellant.

2. The appellant filed claim petition before the Motor Accident Claims Tribunal for the injuries sustained by him in a road accident that occurred on 13.05.2006 near Dharapuram-Tiruppur Bypass claiming compensation in a sum of Rs.50,000/-.

3. The owner of the vehicle, viz., the first respondent remained exparte before the Court below.

4. The Insurance company filed its counter stating that the car in which, the claimant travelled is a tourist car, in which apart from the driver of the vehicle nine members alone can travel. However, at the time of accident, more than 10 members have travelled. Further, the owner of the vehicle does not possess any valid permit and the insurance taken has also expired on 01.02.2006. The driver of the vehicle also does not possess with the trip sheet.

5. The Tribunal on analysis of the oral and documentary evidence adduced, found that at the time of the accident, there was no valid licence. Further, against the rule, more than 10 passengers had travelled in the vehicle. Accordingly, it came to the conclusion that the Insurance company cannot be mulcted with the liability and if at all any compensation has to be paid, the same has to be paid only by the owner of the vehicle.

6. The Tribunal, considering the age of the appellant/claimant and the nature of the injuries sustained awarded a sum of Rs.20,100/- as compensation and directed the owner of the vehicle to pay the same. Challenging the said award passed by the learned Additional District Judge, Fast Track Court No.I (Motor Accident Claims Tribunal), Erode in M.C.O.P.No.252 of 2007, the claimant has come up with the above appeal.

7. Learned counsel for the appellant/claimant would submit that the court below has erred in coming to the conclusion that the Insurance Company cannot be mulcted with any liability, when there is a valid policy available covering the risk of third parties. He would further contend that the claimants have nothing to do with the alleged contractual violations between the insurer and the insured. He would further state that even if the claimant is the occupier, he is entitled for a compensation. Accordingly, he would pray for setting aside the order passed by the Court below.

8. Mr.C.Ramesh Babu, learned counsel appearing for the second respondent-Insurance Company would submit that the Insurance company cannot be directly held responsible or liable to pay any compensation, since at the time of accident, there was no valid licence. Further, no specific amount has been paid by the owner, for the occupier in the vehicle. If at all the claimant is aggrieved, they can only pay and recover the same from the owner of the vehicle. Accordingly, he would pray for the dismissal of the appeal.

9. Heard both sides and perused the records.

10. As far as the owner of the vehicle is concerned, he remained exparte before the lower court. Even today, though notice has been served and his name also printed in the cause list, none appeared for the owner.

11. The Court below after analysing the entire evidence available on record, exonerated the Insurance Company from the liability. Further, the claimant has also sustained only simple injuries as is evidente from the records and the Court below has

also directed the owner of the vehicle to pay a compensation of Rs.20,100/- to the claimant for the injuries sustained by him, warranting no interference in this appeal.

12. Since the matter is pertaining to the year 2007 and the claimant/appellant has also sustained injuries; that the owner of the vehicle has also not appeared before this Court, the second respondent-Insurance Company is directed to pay only the award amount of Rs.20,100/- [Rupees twenty thousand and hundred only] ordered by the Court below and to recover the same from the owner of the vehicle. As regards the interest, it is open to the appellant/claimant to recover the same from the owner of the vehicle.

13. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District Judge,
Fast Track Court No.I,
(Motor Accident Claims Tribunal), Erode.
2. The New India Assurance Co.Ltd.
Kumaran Shopping Complex
Kumaran Road, Tiruppur Taluk
Coimbatore District.

+lcc to Mr.N.Manoharan, Advocate Sr.51742
+lcc to Mr.C.Ramesh Babu, Advocate sR.51248

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