



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.06.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.(MD)No.498 of 2015

and

M.P(MD)No.1 of 2015

WEB COPY

Divisional Manager,
M/s.United India Insurance Co.Ltd.,
7A, West Veli Street,
Madurai District.

: Appellant/2nd Respondent

Vs.

1.Mr.M.Chinnapandi ... 1st Respondent/1st Petitioner
2.Mr.S.Balamurugan ... 2nd Respondent/1st Respondent
3.Managing Director,
M/s.Tamil nadu State
Transport Corporation Ltd.,
Bye pass Road,
Madurai. ... 3rd Respondent/3rd Respondent

Appeal filed under Section 173 of Motor Vehicle Act praying to set aside or modify the orders of the Tribunal dated 13.08.2010 passed in MCOP No.2107 of 2002 on the file of IV Additional Sub Judge, Madurai and allow the appeal with costs.

For Appellant : Mr.B.Rajesh Saravanan

For Respondent3 : Mr.P.Prabhakaran

For Respondents 1&2 : No Appearance

JUDGMENT

The appellant has filed this appeal to set aside or modify the order of the Tribunal, dated 13.08.2010 passed in MCOP No.2107 of 2002 on the file of IV Additional Sub Judge, Madurai and allow the appeal with costs.

2. The appellant is the Insurance Company and second respondent in the Claim Petition in M.C.O.P.No.2107 of 2002 on the file of the Motor Accident Claims Tribunal, IV Additional Sub Judge, Madurai. The first respondent filed a claim petition claiming compensation of Rs.1,00,000/- (Rupees one lakh only). The Tribunal by the order dated 13.08.2010 awarded a sum of Rs.10,000/- as compensation. Aggrieved against the said order, the Insurance company filed the present appeal.

3.Facts of the case:-

On 18.07.2001, at about 6.40 a.m., the first respondent was travelling from Paravai to Thennor Sivakami Mill in the Mini Bus bearing Registration No.TN 60 5337 belonging to the second respondent. The Driver of the second respondent drove the vehicle in a rash and negligent manner and dashed on the back side of the Parked TNSTC Bus bearing Registration No.TN 58 N 0433 belonging to the third respondent. Due to the said accident, the first respondent sustained multiple grievous injuries. According to the claimant, the accident was caused only due to the rash and negligent driving of the driver of the second respondent. Therefore, he filed a claim petition, claiming a sum of Rs.1,00,000/- as compensation.

4. The appellant filed counter statement denying that the accident took place due to rash and negligent driving of the driver of the second respondent. On the other hand, the accident took place only due to rash and negligent driving by the driver of the bus belonging to the third respondent and denied their liability to pay compensation.

5.The third respondent filed counter statement stating that the



accident took place only due to the negligent act of the second respondent and not by the driver of the bus belonging to the third respondent. The claim and interest by the first respondent is excessive, exorbitant and first respondent is not entitled to any compensation.

6. Before the Tribunal, the first respondent was examined as P.W.1 and one Estar Annie Mabell Sigamani was examined as P.W.2 and four documents were marked as Ex.P1 to P4. On behalf of the appellant and respondents 2 & 3, 4 witnesses were examined as R.W.1 to R.W.4 and four documents were marked as Ex.R1 to Ex.R4.

7. The Tribunal framed necessary points for consideration and appreciating the pleadings and evidence held that accident took place only due to rash and negligent driving by the driver of the second respondent. Tribunal awarded a sum of Rs.10,000 as compensation and held that both the appellant and second respondent are liable to pay the said compensation and directed the appellant to deposit the said amount together with accrued interest. Against the said order, the present appeal is filed.

8. Heard the learned counsel appearing for the appellant and the respondents.

9. The learned counsel for the appellant contended that the driver of the second respondent violated the permit conditions as he was plying the Mini bus beyond the permitted route and therefore, the claim petition should have been dismissed. The reason given by the Tribunal for rejecting the evidence of R.W.2, who is an official witness from the Transport Office is contrary to law. In any event, the Tribunal should have ordered the appellant to pay at first instance and recover the same from the second respondent.

10. The contention of learned counsel for appellant in the appeal that driver of second respondent violated the permit condition and therefore, appellant is not liable to pay compensation is untenable. Appellant cannot contend that in view of violation of permit condition, they are not liable to pay any compensation to the first respondent. It is not their case that either second respondent or driver of the second respondent violated any condition of policy. Tribunal has fastened the liability on both appellant and second respondent. Therefore, ordering pay and recovery does not arise. For the reasons stated above, the Civil Miscellaneous Appeal is liable to be dismissed.

11. In the result, The Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-

The Assistant Registrar(CO)

/True copy/

Sub-Assistant Registrar

To
The Motor Accidents Claims Tribunal,
The IV Additional Sub Judge, Madurai

+1cc to Mr.B.Rajesh Saravanan, Advocate SR.No.35149

+1cc to Mr.P.Prabhakaran, Advocate, SR.No.34661

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