IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.NO. 3138 of 2011
and
M.P. No. 1 of 2011

Iffco Tokio General Insurance Co. Ltd.,
No.195, 3rd floor, Thulasi Chambers
T.V. Samy Road (West), R.S. Puram
Coimbatore District. .. Appellant

Vs.

1. Minor Sakthivel
rep. by his father
Mr. Rangaraju

2. Mr. P. Sekar .. Respondents

Prayer: This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2011 made in M.C.O.P No. 276 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Namakkal.

For Appellant : Mr. M.B. Raghavan

For Respondent : Mr. Ma. P. Thangavel for R1
R-2 - No Appearance

J U D G M E N T

Aggrieved by the award of the Tribunal dated 28.02.2011 made in M.C.O.P No. 276 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Namakkal, the Insurance Company has come up with this appeal challenging the liability, since the victim is not an authorised occupant in the goods vehicle.

2. On 22.01.2007, at about 8.30 p.m, while the minor claimant was travelling in a Bajaj Minidar Auto bearing Registration No. TN-28-L-7841, on the Namakkal to Thuraiyur Main Road near Arunthathiyar Colony, the auto was driven by the

driver in a rash and negligent manner and suddenly it dashed against the wall of the bridge and thereby the claimant sustained grievous injuries and compound fractures on his head, eyebrow, chest, right leg and injuries all over the body. According to the claimant, the driver of the auto is responsible for the accident and hence, the injured minor claimant represented by his father filed a claim petition before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), Chief Judicial Magistrate Court, Namakkal, claiming compensation of Rs.3,00,000/-.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.60,000/- as compensation, under the following heads:

Heads	Amount
25% Disability	Rs. 25,000.00
Pain and Suffering	Rs. 5,000.00
Extra Nourishment	Rs. 10,000.00
Transport Expenses	Rs. 5,000.00
Medical Expenses	Rs. 15,000.00
Total	Rs. 60,000.00

4. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the minor claimant, aged 14 years is a student and he was a gratuitous passenger in the auto, which is a goods vehicle and it is in total contravention of the permit, policy and the MV Act. He further contended that the Tribunal, ignoring the Full Bench judgments of this Court, has wrongly directed the Insurance Company to pay and recover.

5. Learned counsel appearing for the first respondent/ claimant would submit the fact that the injured travelled in the vehicle insured with the appellant Insurance Company, met with an accident due to the rash and negligent driving of the driver and the minor claimant sustained grievous injuries is not denied. Considering the injuries suffered by the claimant due to the accident, the Doctor has assessed 25% disability, for which only Rs.60,000/- has been granted as compensation. Hence, he pleaded to dismiss the appeal.

6. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

7. A perusal of the records would show that the injured claimant was a minor, aged 14 years at the time of accident. As pointed by the learned counsel for the Insurance Company the claimant is a gratuitous passenger and the policy being the Act Policy and in the absence of any special coverage for the passengers, the insurer is not liable to indemnify the owner as per the terms of the policy. Even though the vehicle is entitled to carry two persons as per the policy conditions, who can only be his employees and not a student. Though it can be stated that a 14 years old boy can be employed, as there is no adult employee, there is no evidence to prove an employer-employee relationship and in this case it is well proved that the claimant is only a gratuitous passenger. Hence, I find there is much force in the argument of the learned counsel for the Insurance Company. The learned counsel for the appellant also drew the attention of this Court to the omission on the part of the Tribunal to consider the fact that the deceased was travelling in the goods carrier vehicle and to decide thereafter the liability of the Insurer in the light of the finding rendered on the partial issue. This Court finds merit in the argument advanced on the side of the Insurance Company. In view of the well laid down legal position, this Court is inclined to hold that the injured having travelled in the vehicle as a gratuitous passenger, no liability can be fastened on the Insurance Company to pay any compensation on behalf of the owner and driver of the vehicle. Therefore, this Court finds that the award of the Tribunal is liable to be set aside.

8. In fine, the Civil Miscellaneous Appeal is allowed and the Insurance Company is exonerated from its liability. It is open to the claimant to proceed against the owner of the vehicle, if so advised. No costs. Consequently, connected M.P.No.1 of 2011 is also closed.

avr

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

The Chief Judicial Magistrate,
(The Motor Accidents Claims Tribunal)
Namakkal.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr.N.Vijayaraghavan, Advocate SR 16180

+ 1 cc to Mr.Ma.P.Thangavel, Advocate SR 15811

scd(co)
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