BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A.(MD)No.1215 of 2015

and

M.P.(MD)Nos.1 and 2 of 2015

National Insurance Company Ltd.,
Through its Branch Manger,
II Floor, 92, Devarpuram Road,
Near Court Buildings,
Tuticorin 628 003. ...Appellant/Respondent No.2

Vs.

1.Pappa ...Respondent No.1/Petitioner
2.Eswaran ...Respondent No.2/Respondent No.1

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.01.2015 made in M.C.O.P.No.1276 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court), Tirunelveli.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.M.Sankar for R1

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant challenging the award dated 21.01.2015 in M.C.O.P.No.1276 of 2012 passed by the learned Motor Accidents Claims Tribunal (IV Additional District Court), Tirunelveli.

2.The appellant / Insurance company is the 2nd respondent in M.C.O.P.No.1276 of 2012. The 1st respondent is the claimant and the 2nd respondent is the owner of the vehicle, insured with the appellant / Insurance Company.

3.The facts of the case are as follows:

On 23.05.2011 at about 10.30 am., the claimant was travelling in a TATA ACE vehicle bearing registration No.TN 72 AC 8506, which is belonging to the 2nd respondent herein insured with the appellant / Insurance Company by carrying vegetables as the owner of the goods. When the vehicle reaching Ariyanayagipuram on Vilathikulam to Vembar main road, the driver has driven the vehicle in a rash and negligent manner. As a result, the said vehicle lost its control and capsized. Due to the impact, the claimant sustained multiple injuries and fracture. Immediately, the claimant was taken to Government Hospital, Vilathikulam and thereafter, she was taken to Government Hospital Tuticorin for further treatment.

4.The claimant was aged about 44 years and she was hale and healthy at the time of accident. Due to the fracture, she was unable to walk and therefore, she was not able to do any work and suffered permanent disability. The claimant was doing vegetable vending business and was earning Rs.6,000/- per month. She claimed a sum of Rs.10,00,000/- as compensation before the Tribunal.

5.The 1st respondent / owner of the vehicle remained ex parte before the Tribunal.

6.The appellant / Insurance Company in the counter statement denied all the contentions of claimant. The appellant / Insurance Company contended that the vehicle of the 1st respondent did not have valid insurance coverage and also the driver did not possess valid licence to drive the goods vehicle. It is further stated that at the time of accident, 14 persons including the claimant have travelled in the said vehicle and hence, the claimant travelled as an unauthorized passenger and that, the 2nd respondent / Insurance Company has no statutory liability to pay compensation as the policy does not cover the risk of unauthorized passenger and prayed for the dismissal of the claim petition.

7.Before the Tribunal on the side of the claimant, P.W.1 and P.W.2 were examined as witnesses and 12 documents were marked as Ex.P1 to P.12. On the side of the respondents, R.Ws.1 to 3 were examined as witnesses and 8 documents were marked as Ex.Rs.1 to 8.

8.The Tribunal considering the pleadings and evidence and materials on record, came to the conclusion that the accident took place due to rash and negligent driving by the driver of the vehicle. The vehicle was insured with the appellant / Insurance Company. However, as the claimant travelled in the goods vehicle as a passenger, who was a stranger to the policy, the appellant / Insurance Company is not liable to pay compensation to the claimant, but, directed the appellant / Insurance Company to pay the compensation of Rs.3,16,000/- to the claimant and then recover the same from the 1st respondent, owner of the vehicle.

9.Against the said order dated 21.01.2015 in M.C.O.P.No.1276 of 2012 on the file of the Motor Accidents Claims

Tribunal (IV Additional District Court), Tirunelveli, the appellant / Insurance company has come out with the present appeal.

10.The learned counsel for the appellant / Insurance Company contended that order dated 21.01.2015 is liable to be set aside on the ground that as the vehicle involved in the accident is a goods vehicle and the 1st respondent is an unauthorised passenger, the appellant / Insurance Company is not liable to pay compensation.

11.The learned counsel for the 1st respondent contended that the 1st respondent travelled as owner of goods and she is not an unauthorized passenger. The Tribunal considered all the materials and ordered just compensation and also ordered pay and recovery and therefore, prayed for dismissal of the Civil Miscellaneous Appeal.

12.Though notice was served on the 2nd respondent, there is no representation for the 2nd respondent.

13.Heard the learned counsel appearing for the appellant / Insurance Company and the learned counsel for the 1st respondent / claimant. I have carefully perused the materials on record and considered the arguments of the learned counsel on either side.

14.The appellant / Insurance Company has challenged the finding of Tribunal with regard to the fact that the accident had occurred due to rash and negligent driving by driver of vehicle and directed the appellant to pay at the first instance and recover the same from the owner of the vehicle.

15.The learned Judge after considering the evidence of P.W.1, the claimant, and Ex.P.1, FIR and also Ex.P.6 Charge sheet, came to the conclusion that the accident took place only due to rash and negligent driving by the Driver of the TATA ACE. There was no reason to disbelieve the version of P.W.1 and reject Ex.P.6. Hence, there is no reason to interfere with the said conclusion.

16.As per the evidence of RW.1, TATA ACE is a goods carriage vehicle. It is not permitted to carry the passengers and that the claimant travelled in the goods vehicle in violation of policy condition. On the date of accident, 10 persons including the claimant have travelled in the said goods vehicle and as per policy condition, only two persons are allowed to travel. The 1st respondent contended that she travelled as owner of goods namely, vegetables and therefore, she is not an unauthorised passenger. It is well settled that even if there is any violation of policy condition, the Insurance Company may be directed to pay and recover.

17.As per wound certificate - Ex.P.2, discharge summary - Ex.P.7, scan report - Ex.P.8 and Ex.P.11 the learned Judge assessed the disability at 40% and fixed the monthly income of the claimant at Rs.4,500/- and calculated the loss of income at Rs.36,000/- for 8 months being period of treatment and Rs.1,00,000/- for permanent disability. The learned Judge after considering all the materials both oral and documentary has granted compensation on various heads, which is just and reasonable compensation. The appellant has not disproved the nature of injury, percentage of disability and treatment taken by the 1st respondent. Hence, the compensation awarded by the Tribunal is hereby confirmed.

18.In view of the above, I do not find any infirmity in the award passed by the Tribunal in directing the appellant / Insurance Company to pay the compensation amount and later recover from the owner of the vehicle.

19.In the result, the award dated 21.01.2015 in M.C.O.P.No.1276 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court), Tirunelveli is hereby confirmed. The claimant is entitled for a sum of Rs.3,15,721/- with interest at 7.5% per annum as compensation as apportioned by the Tribunal. However, the mode of recovery shall be made as follows:

> "For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected M.Ps.are closed.

20.The appellant / Insurance Company is directed to deposit the entire award amount together with interest, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the compensation, on filing proper application.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal
(IV Additional District Court), Tirunelveli.

Copy to:
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate, SR No.21856
+1 CC to M/s.M.SANKAR, Advocate, SR No.21644

C.M.A.(MD)No.1215 of 2015
18.04.2016

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