IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

C.M.A. No.2897 of 2011
and MP No.1 of 2011

The National Insurance Company Ltd.,
B.O.-1, Thanthai Periyar Market Complex,
P.B.No.15, Salem 636 001. ... Appellant/R2

Versus

1 Mr.P.RajaManickam ... 1st Respondent/Petitioner

2 Mr.V.Ramanathan ... 2nd Respondent/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to set aside the judgment and decree dated 7th March 2011, made in M.C.O.P.No.78/2007, on the file of Motor Accidents Claims Tribunal, (Principal Sub-Ordinate Judge), Salem.

For Appellant : Mr.G.Udayasankar

For 1st Respondent : D.Shivakumaran

J U D G M E N T

The National Insurance Company Ltd in M.C.O.P.No.78 of 2007, on the file of the Motor Accidents Claims Tribunal (Principal Sub-ordinate Judge), Salem, is the appellant. The first respondent/claimant has filed the above petition claiming compensation of Rs.4,00,000/- for the injuries sustained by him in a motor accident on 10.03.2006. The second respondent is the owner of the offending vehicle (Tractor). The Tribunal has awarded a total compensation of Rs.1,46,800/- with interest at the rate of 7.5% per annum.

2. The only challenge before this Court is that the Insurance Company is not liable to pay the compensation because the claimant was sitting on the mudguard of the tractor/offending vehicle, at the time of accident and thereby, the insured violated the conditions of policy. There is no

challenge as regards the quantum of compensation fixed by the Tribunal.

3. The learned counsel for the appellant/Insurance Company would rely on the judgment in New India Assurance Co. Ltd. V. Sudesh Kumari and others, [2007 ACJ 661] wherein paragraph 10, it is observed as follows:

> 10. .... As per the insurance policy, the risk cover is only for the driver and not the passenger and there is no liability on the insurance company with regard to payment of compensation to any passenger sitting on the said tractor. Therefore, the insurance company cannot be held liable.

4. On 10.03.2006, at about 2.00 p.m. near S.M.R.Complex, Veeranam Main Road, when the 1st respondent/claimant was travelling in a Tractor bearing Registration No.T.N.27-P-8956, the driver of the offending vehicle drove the same in a rash and negligent manner and the 1st respondent/claimant fell down from the tractor and the tyre of trailer ran over the thigh of the claimant. The accident occurred due to rash and negligent act of the driver of the offending vehicle. At the time of accident, it is covered by a policy (Ex.R.2).

5. The learned counsel for the 1st respondent/claimant would rely on the decision in The New India Assurance Co. Ltd. V. Raman and others (2014 (1) TN MAC 436) wherein, it has been held that "Policy of Insurance covering liability in respect of Driver as also coolies, employees connected with operation and loading/unloading, the insurer is liable to pay compensation".

6. Ex.R.1 is the registration certificate relating to the offending vehicle tractor. The seating capacity of the vehicle was only one. Therefore, there is no difficulty in coming to the conclusion that by allowing the claimant to travel in the tractor, the driver of the tractor violated the policy conditions. The tribunal has also found that it is a case of violation of policy conditions. The tribunal, therefore, granted permission to recover the amount from the owner of the vehicle. The claimant is a third party. Therefore, it cannot be said that the tribunal committed an error in directing the insurer at the first instance and recover the same from the insured. Therefore, I hold that the award does not require any interference. However, the Insurance Company is entitled to recover deposited award amount from the owner of the offending vehicle by means of execution petition before the tribunal, without filing any separate proceedings.

7.In fine, the Civil Miscellaneous Appeal is dismissed. The award of the tribunal Rs.1,46,800/- [Rupees One Lakh Forty Six

Thousand Eight Hundred Only] with interest at the rate of 7.5% per annum is confirmed. The insurance company is directed to deposit the award amount to the credit of M.C.O.P.No.78/2007, on the file of Motor Accidents Claims Tribunal, (Principal Sub-Ordinate Judge), Salem, within a period of six weeks from the date of receipt of a copy of this order. The Insurer is entitled to recover the deposited award amount from the insured/owner of the vehicle by way of execution proceedings before the tribunal without filing any separate proceedings. The first respondent/claimant is permitted to withdraw the compensation award amount with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. Consequently, connected Miscellaneous petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal,
(Additional District Judge No.III, Tirupattur),
Vellore.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.10546

C.M.A. No.2897 of 2011

RJ(CO)
CA(05/06/2017)