IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2853 of 2017
and
C.M.P. No.16308 of 2017

New India Assurance Company Ltd.,
Gugai, Salem. .. Appellant/2nd Respondent

Versus

1.Ayyavu ... 1st Respondent/ Petitioner

2.Mani ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the learned Motor Accidents Claims Tribunal (Sub-Judge) at Attur in MACTOP No.224 of 1997, dated 02.12.2005.

For Appellant : Mr. J. Chandran

1st Respondent : Mr.K.Thilageswaran

R2 exparte before Tribunal

JUDGMENT

The appeal has been filed by the Insurance Company challenging its liability to pay the compensation.

2. The contention of the learned counsel for the appellant is that the claimant travelled in the Tractor as a gratuitous passenger and as per Section 137 of the Motor Vehicles Act and also as per the provisions of the policy such an unauthorised passenger is not covered and, therefore, the insurer is not liable to pay the compensation. It is further contended that the insurer cannot be made to indemnify the act of the owner of the vehicle for carrying passenger, who is not authorised to travel in the vehicle in view of the violations of the provisions of the Motor Vehicles Act.

3. The issue that falls for consideration before this

Court is "Whether the the contention as raised by the insurer is sustainable?"

4. There is no dispute with regard to the accident, the manner of the accident or the person who was injured in the accident. The accident had happened on 04.10.1996. The appeal is coming up for admission nearly after two decades. Insofar as the merits of the matter is concerned, the claimant Ayyavoo, aged 19 years, an agricultural coolie, earning a sum of Rs.2,400/- p.m., suffered injuries in an accident on 04.10.1996.

5. According to the claimant, he suffered fracture of the bones leading to permanent disablement and consequent loss of earning capacity. The claimant made a claim for a sum of Rs.1,00,000/- as compensation. As against the claim made, the Tribunal has passed an award for a sum of Rs.87,000/-. Challenging the same, the Insurance company has filed the appeal.

6. Admittedly, the injured had been travelling in the tractor but in what capacity the injured has been travelling in the tractor is the main issue to be considered. A perusal of the counter filed by the insurance company before the Tribunal reveals that no specific defence has been taken by the insurer to the effect that the injured was travelling as a gratuitous passenger and therefore, the insurance company is not liable to pay the compensation. A further perusal of the counter reveals that while paragraph 3 of the counter pertains to contributory negligence on the part of the injured, paragraph 4 deals with the nature of injuries sustained by the claimant and paragraph 5 deals with the status of the injured as an agricultural coolie. Paragraph 6 deals with the driving licence of the driver of the vehicle while paragraph 7 deals with the quantum of compensation. Nowhere in the counter affidavit, the insurer has taken a stand that the claimant was travelling as a gratuitous passenger and therefore, the insurance company is not liable to pay the compensation.

7. In the absence of specific pleadings in the counter, no specific issue has been framed by the Tribunal for consideration relating to the liability of the insurance company to pay the compensation.

8. The issues that have been framed by the Tribunal for consideration relates to the rash and negligent driving and the persons responsible for the said act and the other issue relates to the compensation payable.

9. So far as the evidence adduced on the part of the

insurance company is concerned, the policy has been produced and the RC book of the vehicle has been produced. It is stated in the evidence that 3 persons travelled in the tractor at the time of accident and the driver had no driving licence to drive the vehicle and therefore, the insurance company is not liable. Even in the evidence adduced on the side of the insurer, there is no specific evidence that the injured was travelling as a gratuitous passenger and, therefore, the insurer is not liable to pay the compensation. However, during cross examination of R.W.1, the driving licence of the driver was produced, which led the Tribunal to record a finding that the vehicle was driven by a person duly authorised to drive it.

10. So far as the quantum of compensation is concerned, the Tribunal has taken into account the nature of injury, period of treatment and the nature of disablement. The Doctor, P.W.2, has been examined to speak about the permanent disablement. P.W.2 has spoken about the treatment taken by the injured at Athur Government Hospital and later at Salem Government Hospital. On account of fracture of bones, there was bending of right hand and there was disfigurement on account of the surgery done. There was difficulty in carrying heavy weight objects and there is restriction in the movement on the right leg. Considering that implant has been used in the surgery, the percentage of disability has been assessed at 40%. The Tribunal, fixing the monthly income of the claimant at Rs.2,500/- has quantified the compensation, the break up details of the award is as hereunder :-

For injuries sustained by the claimant	:	Rs.20,000/-
For Transportation	:	2,000/-
Loss of Income	:	10,000/-
Nutrition	:	5,000/-
Pain and suffering	:	15,000/-
Permanent Disablement	:	20,000/-
Medical expenses	:	15,000/-
Total	:	87,000/-

11. In view of the foregoing discussion, this Court is of the considered view that in the absence of any pleadings by the insurance company before the Tribunal relating to liability, the Tribunal was completely justified in not taking up the same as an issue. Further, the issues framed by the Tribunal are based on the pleadings and counter, which have been answered in favour of the claimant. Further, the reasoning given by the Tribunal in answering the issues in favour of the claimant do not suffer from any ambiguity and that the finding arrived at based on the

reasoning are cogent and clear and does not warrant any interference. Further, the conclusion arrived at by the Tribunal that the claimant was not travelling as a gratuitous passenger in the tractor is fully supported by the reasoning. Further, it is necessary to point out that even as per the permit issued for the tractor, one person is permitted to travel along with the Driver. In such circumstances, the contention raised by the insurer relating to liability is unsustainable and is liable to be rejected. Accordingly, the same is rejected.

12. For the reasons aforesaid, this appeal is dismissed confirming the award passed by the Tribunal. Consequently, connected Miscellaneous Petition is closed.

13. The appellant / Insurance Comapny is directed to deposit the entire award amount along with interest @ 7.5% per annum from the date of petition till the date of deposit and costs, as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

vsi2/GLN

To

1.The Motor Accidents Claims Tribunal
(Sub-Judge) at Attur

2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.J.Chandran, Advocate SR.No.71495
+1cc to Mr.K.Thilagarasan, Advocate SR.No.72265

C.M.A. No.2853 of 2017

MP(CO)
GN(16/03/2018)