

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.Nos.1245 and 913 of 2008

and

M.P.Nos.1+1 of 2008

The National Insurance Co. Ltd.,
Cuddalore. ... Appellant in both cases

Vs.

1.Thiru V.Ganapathy ... 1st Respondent in C.M.A.No.1245
of 2008

2.Thiru R.Rajadurai ... 2nd Respondent in both C.M.As.

1. G.Vimala ... 1st Respondent in C.M.A.No.913
of 2008

Prayer : Civil Miscellaneous Appeals filed under Section 173
of the Motor Vehicles Act, 1988 against the judgment and
Decree passed in M.C.O.P.Nos.11 and 9 of 2004 on 27.04.2007 on
the file of the learned Motor Accident Claims Tribunal
(Principal Subordinate Judge), Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : No Appearance

COMMON JUDGMENT

The Insurance Company has come forward with these twin appeals
challenging its liability to meet the compensation amount
determined by the Tribunal in M.C.O.P.No.9 of 2004 and
M.C.O.P.No.11 of 2004 on the file of the Motor Accident
Claims Tribunal (Principal Subordinate Judge), Cuddalore.

2. The brief facts are: On 05.01.2003 at about 3 p.m., the
claimants had travelled in an unregistered pickup van of the
1st respondent, and due to the rash and negligent driving of
the said pickup van both the claimants suffered injury.
Seeking compensation of Rs.5,00,000/- each, both the injured
persons moved the Tribunal. As against the claim of
Rs.5,00,000/- filed by the claimant in C.M.A.No.913 of 2008
(M.C.O.P.No.9 of 2004), the Tribunal has passed an award for
Rs.10,000/- whereas, in M.C.O.P.No.11 of 2004 from which
C.M.A.No.1245 of 2008 arises, the Tribunal has passed an award
for Rs.78,000/-.

3. Before the Tribunal, the Insurance Company had taken up a contention that both the claimants could travelled in the fateful day in the pick up van as fare-paying passengers for which there was no policy cover. This however, did not merit the consideration of the Tribunal and accordingly it fastened liability jointly and severally both on the owner of the vehicle as well as the Insurance Company. This is now challenged by the Insurance Company.

4. The learned counsel for the appellant contended that the claimants herein have admitted that they have paid the fare for their travel which is a situation for which there is no insurance policy. He also added that the liability of the Company has to be strictly construed based on the terms and conditions of the contract of Insurance and not otherwise. He however, conceded that the insurance company would still be liable to meet the 'No fault liability' under Section 140 of the Motor Vehicles Act.

5. The case was earlier posted on 04.08.2017 on which date, there was no representation for the respondents. Even today, there is no representation for the respondents.

6. On perusing the record it becomes evident that the van in question is a goods carrier and P.Ws 1 and 2 have deposed that they as well as others who had travelled along with them have paid fare for their travel. This has passed the consideration of the Tribunal as well. However, on perusal of Ex.B2 policy of Insurance, it is seen that they does not cover insurance for the passengers.

7. I therefore, find merit in the submission of the learned counsel for the appellant and accordingly, I choose to interfere with the award passed by the Tribunal.

C.M.A.No.1245 of 2008:

8. The liability of the Insurance Company is limited to Rs.25,000/- under Section 140 of the Motor Vehicles of the Act, out of the total award of Rs.78,000/- passed by the Tribunal in M.C.O.P.No.11 of 2004. The balance there of (Rs.53,000/-) shall be borne by the owner of the vehicle.

C.M.A.No.913 of 2008:

9. Since the amount awarded by the Tribunal is only Rs.10,000/- the same is confirmed, but, the head of liability is altered to one under 'no fault liability' under Section 140 of the Motor Vehicles Act.

10. In the result, both the appeals are allowed to the extent indicated above.

11. The learned counsel for the appellant submitted that the award amount passed under the impugned order dated 27.04.2007 by the Tribunal has already been deposited in the Court. So

far as the deposit made by the appellant in C.M.A.No.1245 of 2008 (Related to M.C.O.P.No.11 of 2004) is concerned, it is permitted to withdraw Rs.53,000/- with all accrued interest and the same has been invested before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

ssn Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
(Principal Subordinate Judge),
Cuddalore.

2.The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.J.Chandran, Advocate SR.No.59810,59809

C.M.A.Nos.1245 and 913 of 2008
and
M.P.Nos.1+1 of 2008

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