

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1257 of 2013
and MP.No.1 of 2013

Iffco Tokia General Insurance Co. Ltd.,
Branch Office at O.K.S.Buildings,
Near I.T. Office, No.5, College Road,
2nd Cross, Tiruppur. ... Appellant/3rd Respondent
Vs.

1.P.Uthiran ...1st Respondent/Petitioner
2.K.Gunasekaran
3.G.Ramesh ...2&3 Respondents/1&2 Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.124 of 2011 dated 05.11.2012 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Erode.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.M.Guruprasad [R1]

JUDGMENT

This appeal has been filed by the Insurance Company against the award dated 05.11.2012 made in MCOP.No.124 of 2011 on the file of the I Additional Subordinate Court, Erode, is on the primary ground that the victim/claimant was an unauthorised occupant on the goods vehicle and as such was not covered under the contract of Insurance marked as Ext.R-1. Incidentally, a ground or two have been raised that the award for Rs.2,20,000/- for assessed disability of 40% arising out of fracture on the left hand is excessive.

2. This Court has given its anxious consideration to the arguments advanced by the learned counsel for appellant/insurer. The counsel for claimant has disputed the basis for the arguments and contended that there was a clear finding that the victim was not an unauthorised occupant on the goods vehicle.

3. Admittedly, the factual finding of the lower court is clear and specific. Reference has been made to Ext.P-1 - FIR that the victim travelled in the vehicle in relation to his employment and the vehicle was engaged for the said purpose. There is no direct or contra evidence adduced by the insurer to show that the

victim was a stranger or a gratuitous occupant travelling on the goods vehicle. R.W.2 an official from the Regional Transport office had marked Ext.X-1 and Ext.X-2 which clearly showed that permit was given for two persons travel in the cabin along with the driver. There is no evidence that any other person or more number of persons than permitted were carried in the goods vehicle. It would therefore appear that the oral/documentary evidence adduced by the insurer was not direct and could not dislodge the evidence on the side of claimant as P.W.1 read with Ext.P-1 FIR that he was an authorized occupant having nexus with the trip availed on the goods vehicle. Even otherwise, it is the burden on the insurance company to prove without doubt that the victim was an unauthorized occupant and not covered under the contract of insurance. In this case, unfortunately, there is no such evidence. In this beneficial jurisdiction, the benefit of doubt, if any, shall go in favour of the victim and in the face of a clear and categorical finding by the Tribunal that the insurer had failed to prove that the victim was an unauthorised occupants, this Court is inclined to confirm the said finding as justified in the circumstances.

4. Coming to the quantum awarded, to be fair, the counsel for insurer made only a feeble attempt that it was high and upon being confronted with the medical evidence and the basis for the assessment, the insurer did not press the point.

5. In fine, this Court is of the view that the appeal deserves to be dismissed and is accordingly dismissed as not sustainable in fact or in law. The award of the lower court is therefore confirmed. It is found that the insurer had deposited 50% of the award amount in terms of the orders of stay dated 17.06.2013. Upon dismissal of this appeal, the insurer shall now deposit the balance of the award sum within four weeks from the date of receipt of this order copy. The claimant shall be at liberty to withdraw such deposited sum. The appeal shall stand disposed of in terms of this order. There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal
I Additional Sub Court,
Erode.

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

+ 1 cc to Mr.Guruprasad, Advocate Sr.8298
+ 1 cc to Mr.M.B.Gopalan, Advocate Sr.8460

C.M.A.No.1257 of 2013

CA(CO)
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