BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1194 of 2016
and
C.M.P.(MD).No.10520 of 2016

The Divisional Manager,
The New India Assurance Company Limited,
Door.No.3, Main Road, 1st Floor,
Dindigul,
Dindigul District. ... Appellant

Vs.

1.Arunachalam
2.Andisamy ... Respondents

Prayer: This Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order passed in M.C.O.P.No.284 of 2014 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Dindigul, dated 01.10.2015.

For Appellant : Mr.S.Sarvagan Prabhu
For Respondents : Mr.A.Hariharan for R1
: Mr.S.Raj Prabhu for R2

JUDGMENT

Heard the learned counsel on either side.

2.The insurer has filed this appeal questioning the impugned award on the ground of liability. The claimant in this case admittedly travelled as an unauthorised and gratuitous passenger in the goods vehicle. The vehicle met with an accident. The claimant was injured. No doubt, the vehicle enjoyed the coverage of the insurance policy issued by the appellant company. A mere look at the policy marked as Ex.R3 would show that though it was a commercial vehicle package policy, liability was limited to basic policy Coverage.

3.Admittedly, the policy in question did not include the case of an unauthorised or gratuitous passenger. The issue as to whether the Insurance company can be made liable even by applying the principle of pay and recover is no longer res integra. As per the full Bench decision of this Court reported in ***2009(1) TN MAC 1***

(FB) (***The Branch Manager, United India Insurance Co. Ltd., V. Nagammal and others)***, the Insurance company cannot be made liable in respect of a passenger in goods vehicle unless such passenger is the owner or joint owner of the goods accompanying the goods in the concerned goods vehicle. Therefore, the Insurance company will have to be necessarily exonerated. The only remedy open to the claimant is to proceed against the vehicle owner. Therefore, to this extent, the impugned award has to be modified. The appellant is exonerated. The first respondent has to proceed against the second respondent for enforcement of the impugned award.

4. The award dated dated 01.10.2015 made in M.C.O.P.No.284 of 2014 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Dindigul, is modified accordingly.

5.The second respondent is directed to deposit the compensation amount of Rs.1,22,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the first respondent is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the deposited amount, if, any.

6.This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Dindigul,

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+ 1 cc TO Mr.D.Selvaraj , Advocate in SR No. 89271
+ 1 cc TO Mr.A.Hariharan , Advocate in SR No. 89316

tsg
AE/JC/SAR1/21.02.2018/3P/6C

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