



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.400 of 2016

and

C.M.P. (MD) No.5487 of 2016

The United India Insurance Co.Ltd.,
23E, EVR Road, Puthur,
Trichy.

... Appellant

Vs.

1.K.Balasubramanian
2.S.Nagalakshmi

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree dated 10.07.2014 passed in M.C.O.P.No.468 of 2013 on the file of the Hon'ble Motor Accident Claims Tribunal, (Special District Court), Tiruchirappalli.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1	: Mr.C.K.M.Appaji
For R2	: Mr.J.Lawrance

JUDGMENT

This appeal has been filed by the Insurance Company questioning the impugned award on the ground of liability as well as quantum. The injured was travelling in TATA ACE vehicle which is a goods vehicle. It dashed against the tamarind tree and in the resulting accident, two persons were injured and one person died. Three claim petitions were filed. M.C.O.P.No.467 of 2013 and M.C.O.P.No.469 of 2013 were filed by the other injured claimants. The Tribunal awarded compensation to the injured in all the cases.

2.The case of the insurance company is that the claimant travelled as gratuitous passenger in a goods vehicle and therefore it is only the vehicle owner who must satisfy the award and not the insurance company. The learned counsel for the appellant insurance company would place reliance on the Full Bench decision of this Court reported in **2009(1) TN MAC 1 (FB) - B.M.United India Insurance Co. Ltd., V. Nagammal & Others** in support to this contention. In the present case the Tribunal has given a finding that the injured had travelled in the goods vehicle not as gratuitous passenger, but as load man.



3.The case projected in the claim petition is that the vehicle was engaged by one Saravanakumar and Pakyaraj for the purpose of loading and unloading of chairs for marriage function. The case of the injured is that they have travelled only as the loadmen in the said vehicle. I went through the counter filed by the appellant insurance company. The insurance company had merely denied the claim of the injured that they travelled as load men. The appellant has not chosen to seriously challenge the said claim. In the absence of any other contra material, the Tribunal was justified in coming to the conclusion which it finally arrived at. This finding of the Tribunal is based on credible materials and proper appreciation of the facts.

4.Even though this case would be covered by terms of the policy, still in view of the fact that the driver of the vehicle did not have any valid and effective driving licence, there has been a breach of the policy. The insurance policy has been marked as exhibit R1. A bare perusal of the insurance policy, shows that there is a coverage for only one employee. Therefore, I would hold that the appellant is found to satisfy the award in M.C.O.P.No.468 of 2013. Even though the injured/petitioner in the said case suffered injuries and disability was assessed at 75%, the Tribunal has given a finding that it is a case of 100% functional disability. The said claimant had suffered fracture. There was also loss of vision in the left eye. Therefore, multiplier method was accordingly adopted. The quantum of compensation cannot be said to be excessive. The Tribunal passed an award by applying pay and recover principle. The vehicle owner remained ex-parte before the Tribunal. She has not chosen to file any independent appeal questioning the award.

5.I therefore, find no merits in this appeal filed by the insurance company. Therefore C.M.A(MD)No.400 of 2016 stands dismissed and the award passed by the Tribunal in M.C.O.P.No.468 of 2013 is confirmed. The appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

6.The appellant insurance company is directed to pay the entire compensation award with 7.5% interest per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of copy of this order, less the amount already deposited if any. On such deposit, the claimant is permitted to withdraw the entire amount, less the amount already withdrawn by her, if any, by filing proper application before the Tribunal. The appellant can thereafter proceed to recover the paid amount from the vehicle owner by filing E.P in these proceedings.

Sd/-

Assistant Registrar (T&P)



To

1. The Motor Accident Claims Tribunal,
(Special District Court),
Tiruchirappalli.

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 86353
+ 1 CC TO Mr.J.LAWRANCE, ADVOCATE IN SR No. 86372
+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 86208

DSS

TE/MR-KKR/SAR-1 : 12/12/2017 : 3P/6C

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