IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1450 of 2006
and C.M.P.No.6498 of 2006

The Branch Manager,
National Insurance Co.Ltd.,
Branch Office:
Anuradha Complex Third Floor,
Opposite Raja Theatre,
Bangalore Road,
Krishnagiri 635 001 ..Appellant/2nd respondent

Vs.

1.S.Mahalingam ..1st Respondent /Petitioner
2.K.A.Mathalaimuthu ..2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 27.10.2005 and made in M.A.C.T.O.P.No.247 of 2005 on the file of the Dharmapuri District Motor Accident Claims Tribunal at Krishnagiri District (Chief Judicial Magistrate No.I Court).

For Appellant : Mr.S.Vadivel

For R1 : Mr.V.Kumaravelan

JUDGMENT

The appellant/National Insurance Company has preferred this appeal against the order and decree passed in M.C.O.P.No.247 of 2005 on the file of the Krishnagiri District Motor Accident Claims Tribunal at Krishnagiri District (Chief Judicial Magistrate No.I Court).

2. The brief facts of the case of the claimant/1st respondent herein that on 19.10.2002, he travelled as a passenger after purchasing cattles and loaded the same in the Tempo bearing Registration Number TN 23 A 8577. When the tempo was travelling on the Kaveripattinam Burger Road, he was fell down due to rash and negligence driving of the driver, causing serious injuries to the claimant/1st respondent herein. He took

treatment in the Krishnagiri Government Hospital and in a private hospital at Tirupattur. The Tribunal, after analysing the evidence and documents placed before it, awarded a sum of Rs.1,09,000/- as compensation with interest at the rate of 9%.

3. Aggrieved by the same, the appellant/Insurance Company has preferred this appeal on the ground that when the claimant was travelling as a unauthorized passenger in the goods vehicle, he cannot claim compensation. Hence, the liability to pay the compensation fixed on the appellant/Insurance Company is improper.

4. The Tribunal, while considering the facts has fixed the age of victim at 37 and on a perusal of Exhibit P2, the wound certificate, it is seen that the claimant had sustained 3 injuries and one of the injury is grievance injury and also suffered fracture of the left clavical bone and to that effect, P.W.2 Doctor was also examined before the Tribunal. The treatment underwent by the claimant and the disability sustained by the claimant was assessed at 20% as per the evidence of P.W.2 Doctor who issued Ex.P5, the disability certificate. The Tribunal, after observing the nature of injuries and the period of treatment undergone and the probable medical expenses incurred by the claimant and also taking into consideration the disability at 20%, has awarded a compensation of Rs.1,09,000/-.

5. While considering the documents furnished on the side of the first respondent herein/claimant, especially the nature of injury sustained by him and the period of treatment underwent by him and the medical expenses incurred by him and the disability assessed by P.W.2 Doctor, it is seen that the amounts awarded by the Tribunal under various heads, are quite reasonable, which needs no interference by this Court. However, it is to be noted that the claimant was travelling in the goods vehicle as an unauthorized passenger. In view of the fact the claimant has travelled as unauthorized passenger in a vehicle, that alone cannot be taken as ground to reject/reduce the compensation made to him, since the liability is on driver of the vehicle, who is responsible for the accident and since the said vehicle is insured, the Insurance Company is also liable to pay the compensation. Hence, this Court is of the view that the claimant/1st respondent herein is entitled for compensation. Hence, the appellant/Insurance Company is directed to pay the compensation and recover the same from the owner of the vehicle, who is the first respondent in the claim application.

6. The award of the Tribunal is confirmed and the appellant/Insurance Company is directed to recover the amount from the owner of the vehicle (first respondent in the claim petition).

7. Though the appellant/Insurance Company is justified in stating that there is a violation of policy condition that the claimant has travelled as an unauthorized passenger in a goods vehicle and their contention that they are not liable to pay the amount, this Court is of the view that it can be compensated by directing the Insurance Company to pay the compensation amount to the claimant and recover the same from the owner of the vehicle/2nd respondent herein by filing appropriate petition. No interference is made with regard to the interest at the rate of 9% per annum awarded by the tribunal.

8. With the above observations, the award of the Tribunal is confirmed. The Civil Miscellaneous Appeal is dismsised. Consequently, connected Miscellaneous Petition is closed. No costs.

9.Accordingly, the appellant/Insurance Company is directed to deposit entire amount along with interest as awarded by the Tribunal within four weeks from the date of receipt of a copy of this order. After depositing the award amount, the appellant/Insurance Company is permitted to recover the said award amount from the owner of the vehicle/2nd respondent herein by filing appropriate proceedings before the tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate No.I Court,
   Motor Accident Claims Tribunal
   at Krishnagiri District

2. The Section Officer,
   VR Section, High Court, Madras (2 copies)

+1 cc to M/s.S.Vadivel, Advocate, SR No.66351

+1 cc to M/s.V.Kumaravelan, Advocate, SR No.66765

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gp(co)
ssm(28/12/18)