IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.10.2018
CORAM:
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2321 of 2005
and
C.M.P.No.12404 of 2005

The Oriental Insurance Co Ltd.,
Pondicherry .. Appellant

Versus

1.Anandan
2.Muthusamy .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 10.08.2004 made in M.C.O.P.No.620 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi.

For Appellant : Mr.M.Rajasekar

For Respondents : Mr.S.Janakiraman for R1

J U D G M E N T

The civil miscellaneous appeal has been preferred by the appellant, which is the Insurance Company/second respondent in the claim application, against the decree and judgment made in MCOP.No.620/2003.

2.The facts leading to the claim application are as follows:-

On 20.09.1999, at about 12.30 pm, the injured claimant was standing at the mud-portion of the Tambaram bus stop. At that time the lorry bearing Registration.No.TN-B 8987, the driver of the lorry asked the claimant to travel in the said lorry as the lorry was also proceeding from Chengalpettu to Kancheepuram junction, near the junction, the driver of the said lorry driven in a rash and negligent manner, the person who travelling in the said lorry was thrown away and he sustained severe injuries and claimed Rs.1 lakh for treatment.

3.The first respondent is the owner of the vehicle and the second respondent is the insurance company. The claimant made a claim for a sum of Rs.1 lakh as compensation. The second respondent insurance company denied the accident and the sum claimed under various heads. The other point stated in the counter statement is that the said injured person travelled in the goods vehicle as an unauthorised passenger. Hence, he cannot claim compensation and only the owner of the vehicle is liable for compensation.

4.The Tribunal after analysing the facts has given finding that the owner of the vehicle is also liable for the act of the driver, since the driver had obtained Rs.25/- from the claimant and he only allowed the claimant to travel in the said lorry. The said facts have been revealed in Ex.P1 FIR. Since the said amount was received by the driver for allowing him to travel in the said vehicle, he cannot be treated as an unauthorised passenger and fixed the liability on the insurance company.

5.Aggrieved against the same, the appellant insurance company has preferred this appeal.

6.The grievance raised in the appeal is that the said lorry is a goods vehicle and the claimant was travelling in the said vehicle as a paid passenger. Hence, the liability on the Insurance Company is not justified. The Tribunal after having given the finding that the owner of the vehicle is also liable for the act of the driver of the lorry, fixing the liability on the insurance company is not proper. The other point raised by the appellant in the grounds of appeal is the disability assessed by the Tribunal and also the sum awarded as Rs.43,500/-.

7.Heard both sides.

8.It is the argument of the appellant insurance company that when the driver has allowed the claimant to travel in the lorry which is a goods vehicle and the claimant also travelled in the same as an unauthorised passenger, he is not entitled to claim damages against the insurance company. Further when it is observed that the driver has obtained Rs.25/- and allowed him to travel in the said vehicle, the said act of the driver is binding on the owner.

9.It is argued by the appellant that whatever the amount received by the driver of the lorry, the claimant was allowed to travel as a passenger in the goods vehicle. Therefore, the owner is liable for the same. Hence fixing the liability on the insurance company is not proven. It is very much argued by the appellant, among the other points, regarding quantum, especially the sum awarded for disability. The main argument advanced by appellant is since it is the driver who allowed the petitioner to travel in the goods vehicle which also binds the owner of the vehicle, pay and recovery should be ordered.

10.On a perusal of the evidence and documents, especially the FIR in which it has been stated that the driver of the said lorry received Rs.25/- and allowed the claimant to travel in the said lorry, hence, the sum awarded by the Tribunal has to be paid by the insurance company and the same has to be recovered from the owner of the vehicle in the same proceedings, since the act of the driver was binding on the owner.

11.Accordingly, the civil miscellaneous appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AT

To
1.The Fast Track Court,
Motor Accident Claims Tribunal,
Kallakurichi.

2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.M.Raja Sekhar, Advocate, S.R.No.67966

C.M.A. No.2321 of 2005

KS(CO)
GSP(15/11/2018)