IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2907 of 2007

The Oriental Insurance Company Ltd,
Bhavani .. Appellant/3rd Respondent

Versus

1. Muthusamy .. 1st Respondent/Petitioners
2. Kulanthai Gounder .. 2nd Respondent/1st Respondent
3. Mathu .. 3rd Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act praying to set aside the decree and judgment passed in M.C.O.P.No.195 of 2006 dated 08.03.2007 Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court IV of Bhavani.

For Appellant : Mr.J.Chandran

For Respondents : Mr.R.Nalliappan for R1

J U D G M E N T

The civil miscellaneous appeal has been preferred against the award passed in MCOP No. 195 of 2006. The appellant herein is the The Oriental Insurance Company Limited.

The brief facts leading to the claim application is as follows:-

2. On 18.11.2004, the claimant was travelling in a vehicle belonged to the first respondent bearing registration No.TN-45-F-7343, and the said lorry was also loaded with Tapioca and at the instruction of the driver, the claimant was sitting on the load. The said vehicle was proceeding from Karur to Erode and at about 11.00 PM, when the vehicle was crossing Ganapathipalayam and while entering the railway bridge, due to the rash and negligent driving of the first respondent driver, while he was driving the vehicle on the speed break the claimant who was sitting on the load, was hit by the angle in the railway gate and sustained severe injuries. He was taken to the Government Hospital, Erode and given treatment for the disability sustained by the claimant, loss of income, medical expenses he claimed a sum of Rs.2,50,000/- as compensation.

3. The third respondent in the counter statement has stated that the accident was not informed to the insurance company. Further, the claimant was travelling in the goods vehicle, which is against the violation of the policy conditions. Hence, he can claim compensation only under the Workmen Compensation Act 1923, since he was travelling in the said vehicle as an employee. Apart from the liability of the claimant, the claims made by him under various heads are also denied by the 3rd respondent.

4. The Tribunal after analyzing the evidence and the documents placed before the same, has given a finding that it is the rash and negligent driving of the first respondent's vehicle which is responsible for the accident and the said vehicle is insured with the third respondent, both the second and third respondents are liable to pay the compensation. While determining the compensation also, the Tribunal has verified the wound certificate, period of treatment and the disability and awarded a sum of Rs.59,990/- as compensation under the following heads:

1.	Loss of Income	Rs. 6,000/-
2.	Transport & Medical Expenses	Rs. 6,190/-
3.	Pain and Sufferings	Rs. 10,000/-
4.	For Permanent Disability	Rs. 34,800/-
5.	Nourishment	Rs. 3,000/-
	Total	Rs.59,990 /-

5. Aggrieved against the liability fixed by the Tribunal the Insurance Company has preferred this appeal.

6. On a perusal of the Judgment, it is observed that on the side of the claimant, two witnesses were examined and exs.P1 to P11 were marked. On the side of the respondents, two witness were examined and one document was marked.

7. PW-1 has deposed before the Tribunal that he was taking the tapioca in the lorry and he was sitting on the said goods, while crossing the railway bridge at Ganapathipalayam, due to the negligent driving of the driver while driving the vehicle on the speed breaker, the petitioner was hit by an angle

in the railway bridge and sustained injuries. Hence, he has stated that the driver is responsible for the said accident by not driving the vehicle in a careful manner. It is also observed that the driver of the said vehicle admitted the offence and paid fine, which was proved by Ex.P7.

8. Regarding the insurance and the ownership of the vehicle, there is no dispute before the Tribunal, but it is observed from the evidence of RW2, who has stated that the driving licence was issued to the first respondent Kulandai Gounder on 18.11.2004. Based on the said licence he can drive only light motor vehicle and heavy passenger vehicles and by possessing the said licence he cannot drive the lorry. Further, at the time of the accident, the said licence was also expired and it was subsequently renewed only in the year 2004, the same was produced before the Tribunal and marked as Ex.R2.

9. Hence, it is the argument advanced by the appellant Insurance Company that at the time of the accident, the driver of the said lorry has no valid license and hence the respondent is not liable to pay any compensation. Further, the license issued to him is only for driving light motor vehicle and heavy passenger vehicles, whereas at the time of the accident he was driving heavy goods vehicle with goods. It is evident from the statement of the respondent/ claimant that under the instructions of the driver, he was travelling on the load and while crossing the railway bridge, he was hit by an angle in the bridge and sustained injury.

10. It is the argument advanced by the respondent that due to the rash and negligent driving on the part of the driver of the lorry, he had sustained injuries, but, on a perusal of the documents, it is observed that the respondent driver has no valid driving licence at the time of the accident. Further on the instruction of the driver, the respondent claimant travelled over the goods. It is for the claimant, to be conscious for his safety, while travelling on the goods vehicle over the load and the driver of the vehicle cannot see the happenings on the top of the lorry while driving the vehicle inside the cabin, hence it is the negligence on the part of the claimant, who was travelling on the load in the lorry.

11. Further, it is also the negligence on the part of the driver, who had driven the goods vehicle without having any license at the time of the accident. Hence, it is the argument by the insurance company that they are no way liable for the said accident, at the most they can pay the compensation only under the head of no fault liability. But on the side of the claimant it is argued that there cannot be any argument by way of no fault liability.

12. Since it is the rash and negligent driving on the part of the driver, the claimant who was travelling in the said vehicle as a loadman of the said goods, cannot be deprived the compensation and the respondent cannot evict his liability. But on a perusal of the discussions made by the Tribunal, the tribunal has fixed the liability on the insurance company by stating that when the said vehicle involved in the accident is insured with the third respondent, the third respondent is liable to pay the compensation.

13. But the arguments and the evidence placed by the claimant is that only on the instruction of the driver, he travelled on the goods. Hence, while analysing the evidence and also the arguments by both sides, the negligence is also on the part of the claimant, who under the instruction of the first respondent driver traveled over the load and invited the accident. Since the vehicle belongs to the second respondent and the vehicle is also insured with the third respondent, 50% of the liability is fixed on the claimant who has contributed for the accident by sitting on the load and invited the accident and 50% of the liability is fixed on the driver, who allowed him to travel on the goods. By that way, the said vehicle is insured with the third respondent, hence, the third respondent and the claimant are fixed with 50% of liability each. Regarding the quantum there is no arguments or dispute over the same. The Tribunal has awarded a sum of Rs.59,990/- as compensation. In view of the decision arrived at by this Court, the Insurance Company is liable to pay the 50% of the amount awarded by the Tribunal to the 1st respondent/claimant along with interest as fixed by the tribunal.

14. In the result, the order of the Tribunal is set aside and the civil miscellaneous appeal is partly allowed. No costs.

15. The Appellant /Insurance company is directed to deposit the 50% of the award amount along with interest as fixed by the tribunal within a period of four weeks from the date of receipt of a copy of this order before the tribunal, if not already deposited. On such deposit is being made, the tribunal is directed to transfer the same directly to the bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

dsa/smv

To
1. The Motor Accident Claims Tribunals
The Additional District Judge/Fast Track Court - IV
Bhavani

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.71210

+1cc to Mr.R.Nalliyappan, Advocate SR.No.71333

RJI(CO)

GMY(07/12/2018)