jkIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.Nos.3240 and 3241 of 2005
and Cross Objection Nos. 6 & 7 of 2008

P.Krishnan ....Appellant in CMA.No.3240 of 2005/ Petitioner

P.Venkatachalam .... Appellant in CMA No.3241 of 2005/ Petitioner

Versus

1.S.Selvam,
2.K.Angappan

3.The New India Assurance Co.Ltd.,
Divisional Office,
Parimalam Complex,
11, E.V.N.Road,
Erode - 11. .... Respondents in both appeals

(R1-Exparte before the Tribunal hence given up)

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.10.2004 made in M.C.O.P.Nos. 59 and 61 of 2004 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Erode.

For Appellant in both appeals	:	No appearance
For R2 in both appeals	:	Mr.P.Jagadeesan
For R3 in both appeals	:	Mr.C.Ramesh Babu

Cross Objection Nos. 6 & 7 of 2008

K.Angappan .... Cross objector in both appeals/Respondent No.2

Versus

1.P.Krishnan .... Respondent in Cross Objection No.6 of 2008 Claimant

1.P.Venkatachalam .... Respondent in Cross Objection No.7 of 2008/Claimant

2.S.Selvam .... 2nd Respondent in both Cross Objections/ 1st Respondent

3.The New India Assurance Co.Ltd., Divisional Office Parimalam Complex, 11, E.V.N.Road, Erode – 11. .... 3rd Respondent in both Cross Objections/ 3rd Respondent

Prayer : Cross objections filed in CMA.Nos.3240 & 3241 of 2005 have been filed against the judgment and decree on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Erode in MCOP.Nos.59 & 61 of 2004 dated 19.10.2004.

For Cross Objector in both cross objection : Mr.P.Jagadeesan

For R3 in both cross objection : Mr.C.Ramesh Babu

JUDGMENT

These Civil Miscellaneous Appeals have been filed against the Judgment and Decree dated 19.10.2004 made in M.C.O.P.Nos. 59 and 61 of 2004 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Erode.

2. The facts of the cases are as follows :

On 14.11.2003, the claimant after purchasing the goats, taken the same in the Mini Auto belonging to the second respondent bearing Registration No.TN-30-Y-1099, loadman namely Venkatachalam also travelled in the same vehicle. When they were proceeding Puthupalayam to Katheri Road, the first respondent, who is the driver of the said vehicle driven the same in a rash and negligent manner and due to suddenly turn the vehicle got capsized. Due to the said action of the first respondent, the claimants sustained severe injuries and they also treated in the hospital. The claimants have claimed a sum of Rs.1,50,000/- in MCOP No.61 of 2004 and Rs.7,00,000/- in MCOP No.59 of 2004, as compensation.

3. The third respondent/Insurance Company, in the counter statement, has denied the rash and negligent driving on the part of the first respondent. The other aspects regarding the age, income and injuries sustained by the claimants have also denied by the Insurance Company. It is further stated that the vehicle involved in the said accident is a three wheeler Mini Door Auto, in which, only three persons can travel in the said vehicle. It is also stated that carrying animals in the said vehicle is against the terms and conditions of the policy and hence the third respondent is not liable to pay the compensation.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the first respondent as he himself admitted the offence and paid the fine and observed that the third respondent/Insurance Company is not liable to pay the compensation and the respondents one and two are liable to pay the compensation. The Tribunal has awarded a sum of Rs.12,500/- in MCOP No.61 of 2004 and Rs.94,500/- in MCOP No.59 of 2004 as compensation. Aggrieved against the said award, the appellants/claimants have preferred this appeal.

5. In the grounds of appeal, it has been stated by the appellants that the award of Rs.12,500/- as against the claim of Rs.1,50,000/- in MCOP No.61 of 2004 and Rs.94,500/- as against the claim of Rs.7,00,000/- in MCOP.No.59 of 2004 are not a just and proper. In view of the observation made by the tribunal that it is a negligence driving of the first respondent resulted in the accident and exonerating the third respondent/Insurance Company from the liability is also not proper. It is also the ground raised in the appeal that the tribunal has not justified the reason for exonerating the Insurance Company from the liability that the claimant had travelled in the said vehicle as unauthorized passenger. The monthly income assessed by the Tribunal, the sum awarded by the Tribunal is Rs.12,500/- and Rs.94,500/- and the rejection of medical bills Exs.P13 and P14 are also not justified. The other grievances raised in the appeal is that no sum has been awarded by the Tribunal for extra nourishment and for pain and suffering.

6. No representation for the appellant. Heard the learned counsel appearing for the 2nd and 3rd respondents and perused the

materials available on record.

7. On a perusal of the records, it is observed that the accident was occurred only when the first respondent/the driver of the Mini Door Auto driven the same in a rash and negligent manner at a turning, due to which and the claimants sustained injuries. It is further observed that a Criminal Case has been registered and the charge sheet Ex.P6 also placed before the Tribunal. It is also observed that the driver of the Mini Door Auto had admitted the offence and paid the fine before the Criminal Court. Further, it is observed that as per Ex.R1-extra premium was paid for the owner of the goods and also the coolie, who has been engaged for lifting goods. But in the said case, no such documents filed before the Tribunal in respect of carrying the load. The Tribunal has also observed that no sufficient documents have been filed by the claimants to substantiate their arguments that they travelled in the said vehicle as owner of the goods. Hence, the tribunal has come to the conclusion that the claimants have travelled in the said vehicle as unauthorized passengers and fixed the liability on the owner and the driver of the said vehicle. In view of the reason stated by the Tribunal, the liability fixed on the appellants based on the evidence and documents is quite reasonable and proper.

8. The third respondent/Insurance Company argued that with regard to the claim made by the claimants at Rs.1,50,000/- and Rs.7,00,000/- as compensation in both the claim petitions respectively, the Tribunal only on verifying the documents especially Ex.P12-Wound Certificate, observed that the claimants have sustained only simple injury and further observed that no documents were filed for claiming medical expenses. Hence, in the absence of documents for medical expenses incurred by the claimants, the compensation awarded by the Tribunal at Rs.12,500/- in MCOP No.61 of 2004 and Rs.94,500/- in MCOP No.59 of 2004 is quite reasonable.

9. The third respondent/Insurance Company has also argued that for the case of unauthorized passenger, the pay and recovery cannot be ordered. In support of the argument, he has produced a case law reported in 2013 ACJ 1187 (Manager, Iffco Tokio General Insurance Co.Ltd versus G.Ramesh and others). The relevant portion of the Judgment read as follows :

> "As rightly argued by the learned counsel for the appellant insurer, the question as to whether the insurance company is statutorily liable to recover the liability in respect of risk of gratuitous passenger, is clearly laid down by Hon'ble Supreme Court in Asha Rani's case, 2003 ACJ 1 (SC), by reversing the earlier decision in Satpal Singh's case, 2000 ACJ 1(SC) and

further question as to whether the doctrine of 'pay and recover' theory, which is applied till then, by directing the insurer to satisfy the award and to recover the amount from the insured even though the insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full bench judgment of our high Court. As per which, after the decision of Baljit Kaur's case, 2004 ACJ 428 (SC), rendered on 6.1.2004 no such direction can be issued by the trial court to the insurance company on the principle of 'pay and recover' relating to the liability in respect of risk of gratuitous passengers travelling in a goods vehicle and no trial court is expected to decide contrary to the decision made thereon.

10. In view of the above discussion, the finding of the Tribunal is quite reasonable. This Court is unable to see any reason to interfere with the findings of the Tribunal. Accordingly, these Civil Miscellaneous Appeals are dismissed, confirming the award passed by the tribunal. The Cross Objections filed by the Respondent are also dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

lpp
To

1. The Motor Accident Claims Tribunal
(I Additional Subordinate Judge), Erode.

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

+1 cc to Mr.P.Jagadeesan Advocate sr72630
+1 cc to Mr.C.Ramesh Babu Advocate sr72282
+1 cc to Mr.S.Kaithamalai Kumaran Advocate sr72290

C.M.A.Nos.3240 and 3241 of 2005
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aa06/01/2020