

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2577 of 2010
and M.P.No.1 of 2010

Divisional Manager,
The New India Assurance Company Limited,
1, Officers Line, VelloreAppellant

Vs

1. Sekar
2. A.HakimRespondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P.No.137 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Cheyyar dated 08.10.2009.

For Appellant : Mr.M.Krishnamoorthy
For Respondent-1 : Mr.K.G.Senthil Kumar
For Respondent-2 : No Appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award dated 08.10.2009 passed by the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar in M.A.C.T.O.P.No.137 of 2006.

2. The brief facts leading to the filing of the instant appeal are as follows;

i) The first respondent sustained injuries on 13.11.2005 as a result of an accident caused by a Mini door vehicle bearing registration No.TN-25-Y-5135 owned by the second respondent and insured with the appellant Insurance Company. The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.137 of 2006 seeking a compensation of Rs.5,00,000/- (Rupees five lakhs only).

(ii) The Motor Accident Claims Tribunal, by its Award dated 08.10.2009 in M.A.C.T.O.P.No.137 of 2008, directed the appellant to pay the first respondent, a sum of Rs.1,76,000/- (Rupees one lakh and seventy six thousand only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The Tribunal has also permitted the appellant to recover the compensation paid to the first respondent from the second respondent, who is the owner of the insured vehicle under the impugned award.

(iii) Aggrieved by the award dated 08.10.2009 passed in M.A.C.T.O.P.No.137 of 2006, the instant appeal has been filed by the Insurance Company questioning its liability to pay the compensation to the first respondent.

3. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant-Insurance Company and Mr.K.G.Senthil Kumar, the learned counsel for the first respondent.

4. According to the learned counsel for the appellant, the subject Insurance policy gives coverage only for one occupant in the Goods vehicle. But, in the instant case, the first respondent, who is the claimant, has claimed that he was a cleaner and therefore, the insurance Company is not liable to compensate the first respondent for the injuries sustained by him as a result of the accident.

5. Per contra, the learned counsel for the first respondent would submit that the issue raised by the appellant is now covered by a judgment of the Hon'ble Supreme Court in the case of SHIVARAJ AND OTHERS -VS- RAJENDRA AND ANOTHER reported in 2018 SCC Online SC 1346, wherein, the Hon'ble Supreme Court has held that in case of policy violation, the insurer will have to pay the claimant and then, recover the compensation from the insured. According to him, the facts of the instant case are similar to the case involved in the judgment of the Hon'ble Supreme Court referred to supra. According to him, in that case, a coolie travelling in the tractor fell down from the tractor and the insurance coverage is only for one person. But, the Hon'ble Supreme Court held that the insurer is liable to compensate the coolie and recover the compensation from the owner of the tractor (insured).

6. This Court has examined the impugned award and after hearing the submissions of the respective counsels, comes to the following conclusion.

a) The Tribunal has rightly directed the appellant to pay the compensation to the first respondent and has also rightly permitted the appellant to recover the compensation paid to the

first respondent from the second respondent, who is the owner of the vehicle (insured).

(b) The decision of the Hon'ble Supreme Court in the case of SHIVARAJ AND OTHERS -VS- RAJENDRA AND ANOTHER reported in 2018 SCC Online SC 1346 supports the case of the first respondent and paragraphs 9 and 10 of the judgment are extracted hereunder.

9. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.

10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by the Court in National Insurance Co.Ltd. V.Swarna Singh & Ors., (2004) 3 SCC 297, Mangla Ram V. Oriental Insurance Co.Ltd., (2018) 5 SCC 656, Rani & Ors. V. National Insurance Co.Ltd. & Ors., 2018 (9) SCALE 310 and including Manuara Khatun and Others V. Rajesh Kumar Singh and Others, (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).

7. In the result, there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal in its entirety including the recovery aspect. No costs.

8. It is brought to the notice of this Court that 50% of the compensation awarded by the Tribunal under the impugned award has already been deposited by the appellant-Insurance Company. Therefore, the appellant-Insurance Company is directed to deposit the remaining 50% of the award amount to the credit of M.A.C.T.O.P.No.137 of 2006 along with interest awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, being made, the first respondent is permitted to withdraw the same on filing an appropriate application. Consequently, the connected MP.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn
To

1. The Motor Accident Claims Tribunal (Subordinate Judge)
Cheyyar

2.The Record Clerk,
VR Section,
High Court, Madras.

+ 1 cc to M/s. M. Krishnamoorthy, Advocate SR.67026
+ 1 cc to M/s. K.G. Senthilkumar, advocate SR.67342

C.M.A.No.2577 of 2010
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EU(29/10/2018)

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