

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 20.11.2018

DELIVERED ON 23.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2547 of 2009

Subramaniyabharathiyar Matric High School,
Bhuvanagiri,
Cuddalore District,
Represented by its Correspondent

... Appellant /1st respondent

Vs.

1. Balakrishnan

... 1st Respondent/claimant

2. The Oriental Insurance Company Limited,
Cuddalore,
Cuddalore District.

... 2nd respondent/2nd respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.60 of 2006 dated 31.10.2008 by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Chidambaram, Cuddalore District.

For Appellant : Mr.M.Arun

for Mr.S.Palanivelayutham

For 2nd Respondent : Mr.N.Sampath

For first Respondent : No appearance

J U D G M E N T

The appellant Subramaniyabharathiyar Matric High School, Bhuvanagiri, Cuddalore District, is the owner of the van bearing registration No. TN-49-Z-0150 involved in the road accident that took place on 05.11.2005.

2. The case of the claimant: The claimant/1st respondent was about to board the van bearing registration No. TN-49-Z-0150 at about 6.00 p.m., on 05.11.2005 at Bhuvanagiri

bus-stand. The driver of the van belonging to the appellant, without ensuring whether the claimant had actually boarded the van, took the van rashly and negligently, as a result of which, the claimant/1st respondent sustained injuries and filed a claim petition in MCOP No.60 of 2006 before the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Chidambaram seeking a compensation of Rs.5,00,000/-.

3. The 2nd respondent/Insurance Company is the Insurer of the vehicle. Their contention is that the van TN-49-Z-0150 is meant for school students and as the driver of the van took general public in the van, there is a violation of police condition and hence, they are not liable to pay any compensation to the claimant.

4. The trial court while awarding a compensation of Rs.92,000/- to the first respondent/claimant, fixed the entire liability on the present appellant, owner of the van by holding that they have violated the policy conditions.

5. Mr.Arun. learned counsel appearing for the appellant contended that though nothing is mentioned in the insurance policy (copy of which is marked as Ex.R1) that the van is only meant for school students, the trial court has committed an error in exonerating the Insurance company. Reliance was placed on the decision in Smt. Inu Devi and another Vs. Smt.Subhadra Devi and another (Patna High Court) in M.A.No.84/2009 dated 30.09.2010, wherein it has been held thus.

However, a rejoinder was filed by the claimant that there is no mention in the registration register or any other document that the bus was meant for the student. It has been challenged the plea of insurance that the bus was meant for school student and contended that though the policy was not adduced in evidence as it was filed even after the closing of the evidence of the forged certificate, however, the lower court considered the document but the lower court illegally held that the offending vehicle was insured as school bus for carrying the school student and the bus was not meant for passenger whereas there is no such mention in the policy rather what is mentioned in a policy is a name of the model of the bus as HRT (School bus) whereas policy has expressly mentioned that it is meant for exceeding 18 passenger but not exceeding 36 passenger. It has further been contended that no contract or term of the contract has been placed along with the policy neither route permit for the said vehicle was considered though filed by the

claimant in reply to the petition filed by the Insurance Company and has further contended that if the Insurance Company takes the plea that there is violation of term and condition of the policy then it is incumbent on him to plead and prove the terms of the violation of the condition. However, there is neither any pleading nor any proof and even the policy was not considered about its terms and only on submission on conjecture and surmises held that the policy is for school student and there is violation."

6. A perusal of the policy Ex.R1 shows that the van has a seating capacity of 18 persons and nothing is mentioned that it should be used only for school students. It is not the case of the Insurance Company that the owner of the vehicle did not have route permit or that the permit to ply the van was restricted only for the school students. It is for the Insurance company to take this specific plea and to show that there was violation of the terms and conditions of the insurance policy on these grounds. The Insurance Company did not file any document to suggest that the vehicle has no permit or the vehicle was driven without the permit and it is well settled that if the insurance company takes a plea about the violation of the condition of the policy, then it is incumbent on him to prove the alleged violation. In the instant case, the insurance company did not adduce any record to show there is violation of policy and therefore, the findings recorded by the tribunal that the appellant herein had violated the conditions of the policy cannot be sustained.

7. The first respondent/claimant and the insurance company did not question the quantum of compensation passed by the trial court.

8. In the result,

i) The appeal is allowed. No costs. The appellant is fully exonerated from paying compensation amount to the claimants.

ii) The quantum of compensation awarded by the tribunal is upheld.

iii) The Insurance Company/2nd respondent is directed to deposit the award amount passed by the trial court to the credit of concerned Motor Vehicle Claims Tribunal with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of 4 weeks from the

date of receipt of the copy of this order and on such deposit being made by the insurance company, the first respondent/claimant is entitled to withdraw the entire amount as per procedure.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Vehicle Accidents Claims Tribunal,
Chidambaram, Cuddalore District.

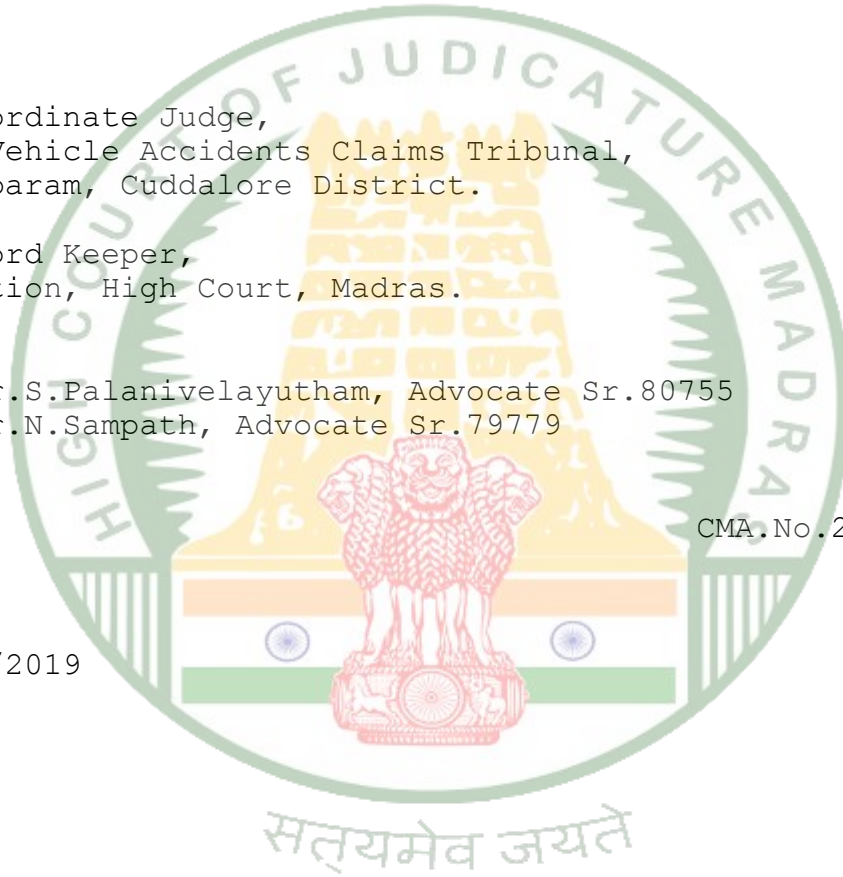
2.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.S.Palanivelayutham, Advocate Sr.80755

+1cc to Mr.N.Sampath, Advocate Sr.79779

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