

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3520 of 2010
&
Cross.Obj.No.17 of 2012

The New India Assurance Company Limited.,
N0.1360, Amman Complex,
E.V.R Road, Erode.

...Appellant/first respondent in
Cross.Obj No.17 of 2012/
2nd Respondent in M.C.O.P.

Vs

1.Valli

... 1st Respondent/Appellant in
Cross.Obj.No.17 of 2012/
Petitioner in M.C.O.P.

2.Rajesh
both CMA.No.3520 of 2010 &

... second respondent in

Cross.Obj.No.17 of 2012/
1st Respondent in M.C.O.P.

(R2 herein set exparte before
the Tribunal)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the decree and judgment dated
26.02.2010 made in M.C.O.P.No.166 of 2005, on the file of Motor
Accident Claims Tribunal, (Principal Sub-Court), Villupuram.

Prayer:- Cross Appeal filed under order 41 of Rule 22 of C.P.C.
Against the Award passed by the Motor Accident Claims Tribunal,
Additional District Court, (Principal Sub Court), Villupuram in
M.C.O.P.No.166 of 2005 dated 26.02.2010.

For Appellant in CMA
& for 1st Respondent

in Cross Objn : Mr.M.Bharathi
for Mrs.Elveera Ravindran

For Respondents

: Mr.T.Dhanya Kumar for R1 in CMA &
for Appellant in Cross Appeal.
R2- set exparte

C O M M O N J U D G E M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 26.02.2010 passed by the Motor Accident Claims Tribunal, (Principal Sub-Court), Villupuram in M.C.O.P.No.166 of 2005.

For the sake of convenience, the parties herein are referred to as they are ranked in CMA.No.3520 of 2010.

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

(i) The first respondent sustained injuries on 10.09.2004, while she was travelling in a mini tempo bearing Registration No.TN-38-L-3888 owned by the second respondent and insured with the Appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.166 of 2005 seeking a compensation of Rs.3,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its Award dated 26.02.2010 in M.C.O.P.No.166 of 2005 directed the Appellant to pay the first respondent a sum of Rs.85,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3.Aggrieved by the Award dated 26.02.2010 passed in M.C.O.P.No.166 of 2005, the instant appeal has been filed by the Insurance Company. The claimant in MCOP.No.166 of 2005 has also filed Cross Appeal No.17 of 2012 seeking for enhancement of compensation.

4.Heard, Mr.M.Bharathi, learned Counsel for the Appellant and Mr.T.Dhanya Kumar, learned Counsel for the first respondent. The second respondent, the owner of the vehicle has remained exparte both before the Tribunal as well as this Court in both the appeals.

5.According to the learned counsel for the Appellant, the Appellant is not liable to pay the compensation since the first respondent was an unauthorized occupant in the insured vehicle which was involved in the accident. He drew the attention of this Court, to the impugned Award and submitted that the insured vehicle can carry only one person according to the permit issued to the vehicle, but in the instant case, the first respondent was accompanying the goods along with the driver of the mini tempo.

6.Further he drew the attention of this Court to the First Information Report registered against the driver and also the

claim petition filed by the first respondent before the Tribunal and submitted that even according to the first respondent, she has disclosed in the claim petition that she was a fruit vendor and in the First Information Report, it has been disclosed that the first respondent as well as two others were accompanying the goods in the mini tempo at the time of the accident. Therefore according to the Appellant, it has been established by the Appellant before the Tribunal that the first respondent was an unauthorized occupant of the insured vehicle which was involved in the accident. The learned Counsel for the Appellant further contended that no pay and recovery rights was also granted to the Appellant under the impugned Award.

7. Per contra, learned Counsel for the first respondent would submit that the grounds raised by the Appellant in this appeal were duly considered by the Tribunal under the impugned Award. He drew the attention of this Court to the findings of the Tribunal, wherein the Tribunal has held that insurance premium was paid by the second respondent/owner of the vehicle to cover two employees as well as the Driver. In the instant case, since the first respondent who was a third person accompanying the goods, the Tribunal has rightly awarded compensation to the first respondent under the impugned Award.

8. This Court, after having considering the materials available on record and after having examined the impugned Award and after hearing the submissions of the respective counsels observes the following:-

(a) A categorical finding has been given by the Tribunal that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

(b) The nature of injuries sustained by the first respondent as a result of the accident caused by the insured vehicle has not been disputed by the second respondent before the Tribunal.

(c) The grounds raised by the Appellant in this appeal has been duly considered by the Tribunal under the impugned Award. The Tribunal has come to the right conclusion that the Appellant is liable to compensate the first respondent on the ground that the insurance premium has been paid by the second respondent/owner of the vehicle to cover two employees as well as the Driver.

(d) Admittedly, the permit for the insured vehicle which is marked as Ex.R2 before the Tribunal permits the insured vehicle to carry only one person. But in the instant case, two persons were carried by the said vehicle at the time of the accident. Therefore it is clearly established by the Appellant before the Tribunal that the owner of the vehicle namely second respondent has committed policy violation. Even though the owner of the vehicle namely the second respondent has committed policy violation, the Tribunal has not granted pay and recovery rights

to the Appellant under the impugned Award. Therefore this Court grants pay and recovery rights to the Appellant to recover the compensation amount paid to the first respondent from the second respondent.

9. In the light of the above observations, this Court is of the considered view that excepting for granting pay and recovery rights to the Appellant, the other findings rendered by the Tribunal in the impugned Award passed in favour of the first respondent is perfectly in order and does not call for any interference by this Court.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed by permitting the Appellant to recover the compensation amount paid to the first respondent as per the impugned Award from the second respondent in accordance with law.

11. The first respondent has also filed a cross objection namely cross objection No.17 of 2012 seeking enhancement of compensation of Rs.1,50,000/-. The learned Counsel for the first respondent in his submissions has not raised any valid ground to enable this Court to award any enhancement of the compensation amount.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition No.1 of 2010 and

(ii) The Cross Objection is dismissed. No costs.

(iii) The Appellant Assurance Company is directed to deposit the amount awarded by the Tribunal along with interest as awarded by the Tribunal, if not already deposited, to the credit of M.C.O.P.No.166 of 2005 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.

(iv) The Appellant is permitted to recover the compensation amount paid to the first respondent as per the impugned Award from the second respondent in accordance with law.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

msr/arb

To

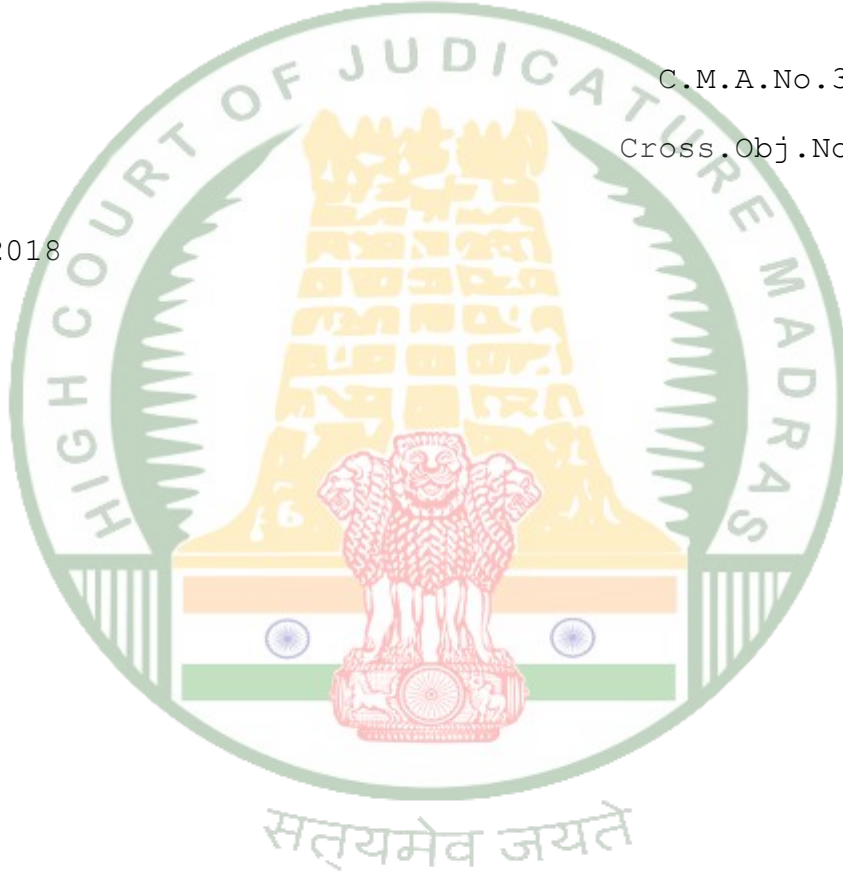
1. The Motor Accident Claims Tribunal,
Principal Sub-Court,
Villupuram.
2. The Section Officer,
Vernacular Section,
Madras High Court.(2 Copies)

+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No.68323

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.68251

C.M.A.No.3520 of 2010
&
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SAI (co)
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