IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1862 of 2011
and M.P.No.1 of 2011

National Insurance Co.Ltd.,
305, Bangalore Road,
Krishnagiri Town,
Represented by its
Branch Manager .. Appellant/2nd respondent

Vs.

1.M.Arul .. 1st Respondent/Petitioner
2.K.A.Madalaimuthu .. 2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 03.07.2008 made in M.A.C.T.O.P.No.1686 of 2003 on the file of the Motor Accident Claims Tribunal at Krishnagiri District (Principal Subordinate Court).

For Appellant : Mr.S.Vadivel

For R1 : Mr.Mukund R.Pandian

JUDGMENT

The appellant/National Insurance Company has preferred this appeal against the order and decree dated 03.07.2008 passed in M.C.O.P.No.1686 of 2003 on the file of the Krishnagiri District Motor Accident Claims Tribunal at Krishnagiri District (Principal Subordinate Court).

2. The brief facts in the claim application are as follows:-

The first respondent herein/claimant was working as a 'collie' under the second respondent who was owner of the vehicle. The first respondent, on 19.10.2002, after purchasing of cows, loaded the same in a Tempo bearing Registration Number TN 23 A 8577 and while travelling towards Burgar Road at about 3.00p.m. when the said Tempo, driven by its driver was in a rash and negligent manner and when the nearing Krishnagiri-Burgar Main Road, hit against road side stones due to which the driver of the Tempo and the first respondent had sustained severe injuries all over the body and this accident occurred only due to the rash and negligent driving by the driver of the said Tempo, which was insured with the second respondent who is the appellant herein.

3. The first respondent/claimant claimed a sum of Rs.5,00,000/- as compensation. In the counter statement, the appellant/Insurance Company denied the liability by stating that the Tempo vehicle is a goods carrier, whereas it was used by the first respondent/claimant and others which is against the policy conditions.

4. The Tribunal, after analyzing the evidence and documents placed before it, arrived at a finding by considering the age of the injured first respondent/petitioner and his income and by considering the medical expenses, the disability, the treatment underwent by the first respondent, awarded a sum of Rs.67,146/-. While fixing the liability on the Insurance Company, the Tribunal has given a finding that though the passengers in the goods vehicle/Tempo have contravene the condition of the policy and travelled in it, they cannot be denied the compensation and the Tribunal gave a finding that the appellant/Insurance Company has to pay the compensation to the claimant. Aggrieved against the same, the appellant/Insurance Company has preferred this appeal. The Tribunal was awarded for a sum of Rs.67,146/- under the following heads:-

Sl.No.	Description	Amount awarded by the Tribunal
1.	Permanent Disability	Rs. 45,000/-
2.	Medical Expenditure	Rs. 17,656/-
3.	Pain and Sufferings	Rs. 2,500/-
4.	Transport	Rs. 1,000/-
5.	Damage to Clothings and Articles	Rs. 1,000/-
	Total	Rs. 67,146/-

5. Heard both sides and perused the materials available on record.

6. On the side of the appellant/Insurance Company, it is argued that the claimant was travelling as an unauthorized passenger in a goods vehicle, which is against the policy conditions and hence, they are not liable to pay any compensation.

7. Regarding quantum, the appellant/Insurance Company has vehemently argued that the Tribunal has not considered the negligence on the part of the driver, who took the claimant as a passenger in the goods vehicle.

8. The appellant's counsel also argued that when the claimant suffered only 45% of the disability, the sum awarded by the Tribunal at Rs.45,000/- by applying the multiplier system, is not proper and in the absence of any documents, the age taken by the Tribunal at 32 is also improper. On the whole, the appellant/Insurance Company has argued that the sum awarded under the head pain and suffering, attender charges, etc., are all excessive and exorbitant.

9. However, it is the stand of the claimant that the Tribunal, while considering the disability suffered by him and also by verifying the details and taking into account the monthly income of the first respondent/claimant and age as 32, it is very much true that at the time of the accident, he was employed as a coolie and his income was properly taken by the Tribunal as Rs.2500/- against the claim of Rs.5,000/-. It was also further observed that the claimant sustained 4 injuries including fracture, for which, he was treated and Ex.A2 wound certificate also reveals that the fact that he sustained 30% disability due to the injuries and it is grievous injury, though the disability certificate reveals 30%, the Tribunal has taken only 25% and hence, by taking consideration the age of the claimant, the income multiplier applied by the Tribunal at 17, is also quite proper. Further, in respect of the medical expenses that has been assessed by the Tribunal, while perusing the relevant document, it is seen that the claimant was under treatment as in-patient from 19.10.2002 to 30.10.2002. Hence, it is observed that the claimant was under treatment and the Tribunal found that he would have taken treatment for atleast 3 months because of the injuries sustained by him. Therefore, the loss of income was also properly assessed by the Tribunal. The Tribunal awarded the compensation at Rs.1,87,077/-.

10. By taking into consideration all aspects including the age and income of the claimant, the disability assessed by P.W.2 Doctor and also Ex.A-2 wound certificate, the sum awarded by the Tribunal is quite proper. Considering all the above aspects, the Tribunal has directed the appellant/Insurance Company to pay the compensation to the claimant.

11. Though the appellant/Insurance Company is justified in stating that there is a violation of policy condition that the claimant travelled as an unauthorized passenger in a goods vehicle and their contention that they are not liable to pay the amount, this Court is of the view that it can be compensated by

directing the Insurance Company to pay the compensation amount to the claimant/1st respondent and recover the same from the 2nd respondent. The tribunal has also rightly concluded the said aspect and fixed the liability. No interference is made regarding the award of interest at the rate of 9% per annum.

12. With the above observations, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal including the liability fixed on the appellant/Insurance Company is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1) The Principal Subordinate Court,
   Motor Accident Claims Tribunal at
   Krishnagiri District

2) The Section Officer,
   VR Section,
   High Court, Madras. (2 copies)

+1 cc to M/s.S.Vadivel, Advocate, S.R.No.66353

+1 cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.66792

C.M.A.No.1862 of 2011
and M.P.No.1 of 2011

GP(CO)
SSM(26/12/2018)