

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2379 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Co.Ltd.,
Rep. by its Branch Manager,
Mission road, Near Subbaiah Circle
Bangalore. .. Appellant/2nd Respondent

Vs.

1. Thavamani
2.Sampangi Rajappa
.. Respondents / Petitioner /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.06.2014 made in M.C.O.P.No.307 of 2008 on the file of the Motor Accidents Claims Tribunal / Sub Court, Dharmapuri.

For Appellant : Mr.M.B.Gopalan

For R1 : Mr.C.Prabakaran

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 19.06.2014 made in M.C.O.P.No.307 of 2008 on the file of the Motor Accidents Claims Tribunal / Sub Court, Dharmapuri.

2.The appellant/Insurance Company is second respondent, first respondent is claimant and second respondent is first respondent in M.C.O.P.No.307 of 2008 on the file of the Motor Accidents Claims Tribunal / Sub Court, Dharmapuri. The first respondent filed the said claim petition claiming

a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.05.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the tractor belonging to the second respondent insured with the appellant and directed the appellant to pay a sum of Rs.4,30,000/- as compensation to the first respondent.

4.Against the said award dated 19.06.2014 made in M.C.O.P.No.307 of 2008, the appellant/Insurance Company has come out with the present appeal challenging the liability as well as quantum of compensation.

5.The learned counsel appearing for the appellant contended that the first respondent travelled as a gratuitous passenger in the mudguard of the tractor. The tractor is registered for agricultural purpose and at the time of the accident, it was used for commercial purpose. As per the insurance policy, no person travelling in the tractor is covered except its driver and only the driver can travel in the tractor. The first respondent is not a load man of the second respondent and owner of the tractor. The compensation awarded by the Tribunal under the different heads are excessive and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that the first respondent was a load man and after loading the stones in the tractor from Jeyaram factory, accompanied the stones to unload the same. He is not a passenger and he travelled as a load man and employee of the second respondent. The policy issued by the appellant covers load man. The award of the Tribunal is proper and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

8.As far as the contention of the learned counsel appearing for the appellant that the first respondent travelled only as a passenger and not as a load man and not covered under the policy is concerned, the appellant examined R.W.1., Senior Assistant of Insurance Company and marked the policy as Ex.R1. The Tribunal considered Ex.R1 policy and found that the second respondent in addition to the basic premium, has paid premium for extra loading as well as third party. Based on the said fact, the Tribunal has held that the appellant is liable to pay the

compensation to the first respondent. In the appeal, the appellant has not denied that the second respondent paid extra premium as found by the Tribunal. The contention of the learned counsel for the first respondent is that the first respondent travelled as a load man after loading stones from Jeyaram factory is not controverted by the appellant by letting in any evidence. In such circumstances, this Court is of the considered view that there is no perversity in the said finding of the Tribunal warranting interference by this Court.

9.As far as quantum of compensation is concerned, the Tribunal considering the oral and documentary evidence, awarded just compensation and the same is not excessive. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

10.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
Subordinate Judge, Dharmapuri.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr. C.Prabakaran, Advocate SR.No. 81540

+1cc to Mr.M.B.Gopalan, Advocate SR.No. 81928

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A.SK(11/02/2019)