

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No. 2744 of 2012
and M.P.No.01 of 2012

The New India Assurance Co.Ltd.,
Srivari Complex,
2/91, Meyyanur,
Salem.

... Appellant/Respondent-2

Vs

1.Ramayee
2.Saravanan
3.Kamala

... R1 to R3/ Claimants

4.Meena Elangovan

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 19.01.2012 made in M.C.O.P.No. 1726 of 2009 on the file of the Motor Accident Claims Tribunal/[Additional District Judge] (Fast Track Court No.1) Salem.

For Appellant : M/S.S.Manohar

For Respondents : Mr.V.Kumaravelan R1 to R3

: Give Up - R4

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No. 1726 of 2009, on the file of Additional District Judge (Fact Track Court No.I) Salem, the appellant who is the 2nd respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claims Tribunal. In the Claims Tribunal, the respondents No.1 to 3 had filed a claim petition under Section 166 of Motor Vehicles Act. In which they are claiming Rs.15,00,000/- as a compensation for the death of one Kandhasamy. In the claims tribunal the 4th respondent and the appellant are added as a 1st and 2nd respondent respectively. The respondents 1 to 3 are related to the deceased as wife, son and daughter respectively. After elaborate enquiry the Claims Tribunal awarded a sum of

Rs.4,98,000/- payable by the 2nd respondent with interest at the rate of 7.5% per annum. Against which the 2nd respondent/Insurance Company has been preferred this appeal.

2. For the sake of convenience herein after, the parties are referred to as per the litigative status in the Claims Tribunal. In the Claims Tribunal, the owner of the offending vehicle is the 1st respondent but he remained ex parte.

3. Today, when this appeal is taken up for consideration both the counsels(i.e) appearing for the claimants and the 2nd respondent are present. The learned counsel appearing for the appellant would contend that, during the time of an accident, the owner of the offending vehicle violated the policy conditions. Thereby, the Insurance company is not liable to pay the compensation to the claimant. Further, he would contend that the Claims Tribunal without considering the said aspect, passed an order against the appellant in which the Insurance company is directed to pay the entire compensation to the claimants. According to him, the said order has to be modified through this appeal. Per contra, the learned counsel appearing for the claimant did not raise any objection for the prayer sought by the respondent.

4. Now, on going through the judgment rendered by the Claims Tribunal, it appears during the time of enquiry. On the side of the respondent/ insurance company one M.Varatharajan, who is the Junior Assistant working in a Dharmapuri Regional transport office was examined as R.W.1. He has stated for the vehicle (bus) bearing registration No. TN29AC6655, permit was issued for the period of 25.01.2007 to 24.01.2012, particularly for running the bus through the road from Dharmapuri to Salem. Further, it was a contention, that the said bus have been routed through Kadathur, Pomidi, Paapirettypatti, and Aachankuttapatti. But, according to the averments made in the First Information Report the road accident had happened near to the Pannapatti Cross road in Theevattipatti. He specifically stated that, as per the permit, the offending vehicle not to run in the occurrence place. In this regard, in order to dispute the said evidence the owner of the offending vehicle did not appeared before the Claims Tribunal and submitted his case, in order to support the evidence given by R.W.1, the Deputy Manager of the Insurance Company has been examined as R.W.2. He has also stated that during the time of accident the bus was driven by its driver not in accordance with the permit issued to him.

5. Therefore, the evidence given by R.W.1 and R.W.2 in respect to the violation of permit is not disputed on the side of the 1st respondent who is the owner of the offending vehicle.

It shows the owner of the vehicle admitting the policy violation. Therefore, since the driver of the bus violated the conditions of permit issued to the bus, the 2nd respondent/ Insurance Company is not liable to pay the compensation. However, in this connection, it is necessary to see the Judgment of our Honourable Apex Court, reported in 2013 (2) TNMAC 535. It is the settled position that if the owner of the vehicle violated the policy conditions, it is necessary to direct the insurer to pay the compensation with liberty to recover the said compensation from the owner of the offending vehicle without filing any formal application. This Court has also followed the said principle and accordingly this Court directs the insurer to pay the compensation to the claimant. Further, liberty is granted to him to recover the said amount from the owner of the vehicle without filing any formal application. The other conditions found in the award in respect to interest is unaltered.

6 In the result, the Civil Miscellaneous appeal is allowed. There shall be no order as to costs. Consequently the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.I, Salem.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.V.Kumaravelan, Advocate Sr.No.75534
+1 cc to Mr.S.Manohar, Advocate SR.No.75435

C. M.A. No.2744 of 2012

CSL/02.01.2019