IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 29.11.2018
CORAM
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM
C.M.A.No.251 of 2013
and M.P.1 of 2013

The New India Assurance Co.Ltd.,
S.I.E.T, Building, 2nd Floor,
No.463, Anna Salai, Teynampet,
Chennai-18. …. Appellant

Versus

1. J.K.Ayyappan

2. S.V.Muthu Kumaran .... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M.A.C.T.O.P.No.3359 of 2009 on the file of the Motor Accidents Claims Tribunal (Fast Track Court – III, Additional District and Sessions Judge) at Chennai dated 03.04.2012.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.A.A.Venkatesan, for R1

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree made in M.A.C.T.O.P.No.3359 of 2009 on the file of the Motor Accidents Claims Tribunal (Fast Track Court – III, Additional District and Sessions Judge) at Chennai dated 03.04.2012.

2. The brief facts relating to the claim application are as follows:

On 10.04.2009 at about 4.00 hours, when the petitioner was travelling as a cleaner in a load van bearing Registration No.TN-03-A-9364 proceeding from North to South direction, the driver of the said van had driven the vehicle in a rash and negligent manner endangering to public safety and also lost his control and dashed against the roadside tree and the said van got capsized. In the result, the petitioner and other persons who travelled in the lorry along with the petitioner sustained grievous injuries. The first respondent and the second respondent, who are the owner and the insurer of the vehicle respectively, were held liable to pay the compensation to the claimant. Hence, the claimant filed a claim petition claiming a sum of Rs.2,50,000/- as compensation for the injury, disability and other loss sustained by him.

3. The appellant/Insurance Company, has filed the counter statement stating that the claimant was travelling in the said vehicle as an unauthorized passenger with four more persons which is against the provisions of the statute and the conditions of the Insurance Policy. Hence, the appellant is not liable for any claim against the Insurance Company and the owner of the vehicle is liable to pay the

compensation. It is also stated in the counter statement that the claimant was not a cleaner but the vegetable vendor. It is further averred that the claim made by the claimant is very much excessive when there is no basis or documentary evidence for the sum claimed by him under various heads.

4. The Tribunal, after analyzing the evidence and documents, has given finding that the driver of the second respondent drove the vehicle in a rash and negligent manner, which resulted the accident. Regarding the sum awarded as compensation, the Tribunal has considered the evidence of the claimant and the Doctor/P.W.3, who has issued the disability certificate and other related documents and awarded a sum of Rs.1,01,000/- as compensation under various heads and fixed the liability on the owner of the vehicle and the Insurance Company are directed to pay the said compensation jointly and severally to the claimant. The award of the Tribunal is as follows:

Heads	Sum awarded by the Tribunal (Rs.)
For 50% disablement	75,000.00
For Medical Expenses	2,000.00
For Pain & sufferings, Nutritious food & transportation	15,000.00
For loss of income	9,000.00
Total compensation	1,01,000.00

Aggrieved against the said liability, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, it is stated that the Tribunal ought to have exonerated the appellant/Insurance Company and fastened the liability only on the second respondent who is the owner of the goods van as the driver of the second respondent has committed the breach of policy conditions by carrying five unauthorized passengers in the vehicle at the rear portion of the said van. The other grievances made in the appeal is that,

when there is a clear statement in the FIR that the claimant along with four other persons travelled in the said vehicle, violating the terms and conditions, the evidence of R.W.1 and R.W.2 were not considered by the Tribunal. Hence, the award of the Tribunal has to be set aside.

6. Heard the learned counsel appearing for the appellant/ Insurance Company and the learned counsel appearing for the first respondent/claimant.

7. On a perusal of the records, it is seen that on the date of accident, the claimant was travelling in the second respondent vehicle, which is the van, used for carrying the goods. The appellant has also argued that the fact stated in the FIR has been proved that the claimant was travelling in the said vehicle as a vegetable vendor for buying vegetable from Koyambedu market along with four persons, which can be very well presume that he is not only the cleaner, but also the vegetable vendor and for purchasing the vegetables, he travelled in the said vehicle. Hence, it is clear that he travelled in the said vehicle as an unauthorised passenger in the rear portion of the vehicle, which is used for loading the goods.

8. It is also argued by the appellant that the Tribunal without properly considering the evidence of R.W.1 and R.W.2. has came to the conclusion that the claimant who is a cleaner is very much entitled for the compensation.

9. On the other hand, it is argued by the claimant that the driver of the vehicle had given the statement before the investigation officer that the petitioner was travelling as a cleaner, hence considering the said statement of the driver of the vehicle the Tribunal has given finding and the claimant is very much entitled for the compensation.

10. The learned counsel for the appellant further replied that the claimant has travelled as cleaner along with four persons in the said goods vehicle against the terms and conditions of the policy. The award of the Tribunal and the liability fixed on the appellant is not justified.

11. In view of the fact proved by the appellant that the claimant travelled along with four persons in the vehicle, which meant for carrying the goods, it would be appropriate to direct the second respondent/owner of the vehicle to pay the compensation to the claimant, since both the driver and the owner of the said vehicle were acted against the terms and conditions of the policy by permitting the persons to travel in the vehicle, which meant for carrying goods.

12. Further, in view of the fact that the petitioner sustained severe injuries because of the negligence on the part of the driver of the van, which belongs to the second respondent, the Insurance Company is directed to pay the compensation amount awarded by the Tribunal to the claimant and thereafter, recover the same from the second respondent/owner of the vehicle.

13. Since it is represented by the appellant that the appellant/Insurance Company has deposited the entire compensation amount before the Tribunal, the first respondent is permitted to withdraw the amount, which is lying to the credit of M.A.C.T.O.P.No.3359 of 2009 on the file of the Motor Accidents Claims Tribunal (Fast Track Court - III, Additional District and Sessions Judge) at Chennai, less the amount already withdrawn by him. The appellant/Insurance Company is permitted to receive the award amount from the second respondent/owner of the vehicle by filing appropriate petition.

14. In view of the above, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi/cla

To
1. The Motor Accidents Claims Tribunal
(Fast Track Court - III,
Additional District and Sessions Judge)
Chennai.

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

+1cc to Mr.A.A.Venkatesan, Advocate sr.no.81677
+1cc to Mr.M.Krishnamoorthy, Advocate sr.81942

CMA.No.251 of 2013

nr 02/05/2019