



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.320 of 2015
and M.P.No.1 of 2015

M/s.Bajaj Allianz General Insurance Co. Ltd.,
G.E.Plaza, Airport Road,
Airwada, Pune 411 006.

... Appellant/2nd Respondent

Vs.

1.Mohamad Mansoor
2.F.K.Jameel

... Respondents/Petitioner &
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.07.2014 made in M.C.O.P.No.40 of 2007, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Thiruvannamalai.

For Appellant : Mr.T.K.Premkumar

For R1 : Mr.B.Jawahar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, to set aside the award dated 22.07.2014 made in M.C.O.P.No.40 of 2007, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Thiruvannamalai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.40 of 2007, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Thiruvannamalai. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.06.2006.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to



rash and negligent driving by the driver of the mini door auto belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.2,21,120/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent. Challenging the said award dated 22.07.2014 made in M.C.O.P.No.40 of 2007 granting compensation to the 1st respondent, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to consider the objection raised by the appellant that the claimant traveled as a gratuitous/unauthorized passenger in goods vehicle in violation of permit and policy condition. The Tribunal erred in not making any specific finding concerning actual capacity in which the claimant/1st respondent was traveling in goods vehicle at the time of accident. The Tribunal erred in holding that whether the 1st respondent traveled as coolie for loading and unloading or as unauthorized passenger, the appellant has to pay the compensation and recover the same from the owner of the vehicle, which is contrary to the judgment of this Court and the Hon'ble Apex Court. The appellant is not liable to pay any compensation for unauthorized passengers traveling in goods vehicle and also raised various grounds with regard to percentage of disability and quantum of compensation.

5.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent let in evidence to prove that he traveled in the goods vehicle as authorized representative of the owner of the goods. In the FIR itself it is mentioned that the 1st respondent traveled in the goods vehicle as authorized representative of the owner. R.W.1-an Official of the appellant admitted that they are disputing the claim of the 1st respondent that he is the representative of the owner of the goods on the ground that no goods were in the vehicle at the time of accident. The Tribunal has given valid reason for directing the appellant to pay compensation at the first instance and recover the same from the owner of the goods.

6.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

7.From the materials on record, it is seen that the 1st respondent in the claim petition has stated that he traveled as a cleaner in the mini door auto belonging to the 2nd respondent. In the complaint given to the police, it is stated that the 1st respondent is an employee of one Anbumani and he was assisting the said Anbumani for wages in his business and stated that the vehicle got repaired and hence, returned without loading fishes.



The appellant examined R.W.1 who deposed that the 1st respondent traveled in the mini door auto as passenger. From the award of the Tribunal it is seen that the Tribunal has not given any finding whether the 1st respondent traveled as load man or as passenger. The Tribunal relying on the judgment reported in 2011 1 TN MAC 281 [New India Assurance Co. Ltd., Vs. Thangavel and another], held that whether the 1st respondent traveled as a load man or passenger, the appellant has to pay compensation at the first instance and recover the same from the 2nd respondent. The Tribunal has to give a specific finding as to in what capacity the 1st respondent traveled in order to fasten the liability on the appellant. On the part of failure of the Tribunal to give such a finding, the award of the Tribunal is set aside and M.C.O.P.No.40 of 2007 is remanded back to the Tribunal, directing the learned Judge to decide the status in which the 1st respondent traveled in the mini door auto and fix the liability and the quantum of compensation. The award with regard to negligence on the part of the driver of the mini door auto is confirmed.

8.In the result, the Civil Miscellaneous Appeal is allowed. The M.C.O.P is remanded to Tribunal. The claim petition is of the year 2007. The learned Principal Subordinate Judge, Thiruvannamalai is directed to dispose of the M.C.O.P on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
(Motor Accidents Claims Tribunal),
Thiruvannamalai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.T.K.Premkumar, Advocate Sr.35860

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kk[co]
srg 11/10/2019