

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.08.2017

JUDGMENT PRONOUNCED ON : 23.02.2018

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.NO.2252 OF 2009
AND MP.NO.1 OF 2009

National Insurance Company Ltd.
No.11/28M, Ramakrishna Road
Salem.

.... Appellant/Respondent

Vs.

1.V.Selvaraj
2.Ashok Kumar @ Ashokan

... Respondents/Petitioners

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 27.01.2009 made in O.P.No.209 of 2004 on the file of the Motor Accidents Claims Tribunal (Sub Court), Bhavani.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Ma.P.Thangavel [for R1]
Mr.J.Franklin [for R2]

JUDGMENT

The second respondent /insurance company in MCOP.No.209 of 2004 on the file of MACT (Sub Court, Bhavani) has approached this Court with this appeal.

2. The minimum facts required to be stated for the disposal of this case are:

On 29.05.2004, at about 11.00 in the night, Selvaraj , the claimant before the Tribunal was riding on the pillion of a TVS-50, a moped, bearing No. TN28 U 9637, was thrown off when a mini door auto rickshaw owned and driven by the first respondent before the Tribunal dashed against it. The accident had occurred due to the negligence of the auto driver. Due to the accident, the claimant suffered multiple injuries which include grievous injuries to his head, right hand, left hip and right

shoulder. He was first admitted in Government Hospital, Erode, from where he was shifted to Coimbatore Medical College Hospital. Claiming that he was 31 years at that relevant time and a weaver in a power-loom, the claimant sought a compensation of Rs.3,00,000/- under various heads.

3.1 The owner and driver of the vehicle, the first respondent before the Tribunal filed his counter but remained ex parte and the appellant alone contested it. Its only contention before the Tribunal was that the claimant had not impleaded the owner and the insurance company of the moped in which he travelled at that relevant time. It also pleaded that the first respondent, the driver-cum-owner of the offending vehicle did not possess the valid and effective driving licence for driving a goods carrier. Without evaluating the evidence before it, the Tribunal has passed an award for Rs.65,000/- payable with interest at 6% per annum, fastening the liability on it jointly or severally along with the owner of the mini door auto.

3.2 On the point of insurer's liability based on its pleading that the second respondent herein did not possess a valid and effective driving licence to drive a public goods carrier, the Tribunal has negated the same on the ground that the second respondent was carrying goods in the mini door auto at that relevant time and it was not proved that they were not his personal goods. The Tribunal has however reasoned that the burden is on the appellant/insurance company to prove the contra of what it had argued and to lead in evidence in aid of his pleadings. Here the appellant has not established that the goods in the vehicle belonged to a third party and that the second respondent herein drove the vehicle at that relevant time as a public goods carrier. Therefore, it jointly and severally fastened the liability on them.

4. The only point argued by the learned counsel for the appellant is that the burden was on the second respondent to prove that he was driving the offending vehicle at that relevant time only for personal purposes and inasmuch as the second respondent has not appeared to prove, the adverse inference must be drawn against the first respondent and accordingly the proving benefit must be granted to the appellant. At the worst, the counsel contended, that it is a case where only doctrine of pay and recover can be applied.

5. While this Court does not dismiss the argument of the appellant as without merit, it must also be said that this point was never raised before the Tribunal, and at any rate, given the quantum of compensation awarded and given the time that has

lapsed, no profitable purpose is likely to be achieved in deciding this issue solely on the basis of a ground to draw adverse inference against the conduct of the second respondent.

6. To conclude, this Court does not find any merit and the appeal is dismissed accordingly. The appellant/insurance company is directed to deposit the entire award amount as determined by the Tribunal along with interest @ 6% within four weeks from the date of receipt of a copy of this order, less any amount already deposited and the claimant is permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Court,
(Motor Accident Claims Tribunal)
Bhavani.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.14325

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.14996

CMA.No.2252 of 2009

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