

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2611 of 2010

and MP No.1 of 2010

The Branch Manager,
The New India Assurance Co. Ltd.,
Branch Office,
105, Railway Station Road,
Thirupathur Town,
Vellore District.

... Appellant/R2

Vs

1.Silambarasu

...R1/Petitioner

2.S.Ramachandran

...R2/R1

(2nd Respondent ex parte in Lower Court,
and hence Notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.1229 of 2001 dated 01.06.2010, on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.T.Panchatsaram for R1
R2 - Ex parte

J U D G M E N T

The instant appeal has been filed by the Appellant Insurance Company challenging the Award dated 01.06.2010, passed by the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri in M.C.O.P.No.1229 of 2001.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent sustained injuries on 18.03.2001 while travelling in a Tractor-Trailer as a coolie, bearing Registration No.TDD 4797 owned by the second respondent and insured with the Appellant.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP No.1229 of 2001, seeking a compensation of Rs.8,05,000/- which was restricted to

Rs.5,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 01.06.2010 in MCOP No.1229 of 2010, directed the Appellant to pay the first respondent a sum of Rs.88,160/- together with interest at 6% per annum from the date of claim till the date of realization.

3.Aggrrieved by the Award dated 01.06.2010, passed in MCOP No.1229 of 2010, the instant appeal has been filed by the Insurance Company.

4.Heard, Mr.N.Vijayaraghavan, learned Counsel for the Appellant and Mr.T.Panchatsaram, learned Counsel for the first respondent.

5.According to the learned Counsel for the Appellant, the primary ground for challenge in the instant appeal is that the first respondent being an unauthorized person travelling in a Tractor-Trailer is not entitled to be compensated by the Appellant. Since the premium paid by the insurer is only for the traveller of the Tractor-Trailer and not for any other person travelling in the Tractor-Trailer.

6.According to the learned Counsel for the Appellant, the Tribunal under the impugned Award ought not to have come to the conclusion that being a violation of policy condition, the Appellant will have to pay the compensation amount to the claimant, thereafter, recover the same from the owner of the vehicle namely the second respondent in the instant appeal.

7.Per contra, the learned Counsel for the first respondent/claimant would submit that the issue raised by the Appellant is now covered as per the recent judgment of the Hon'ble Supreme Court in the case of Shivaraj vs. Rajendra & Anr. (Civil Appeal Nos.8278-8279 of 2010 and the said judgement was delivered on 05.09.2018. The facts of the said case are similar to the facts of the instant case on hand. In that case also a coolie was travelling in a Tractor and he sustained injuries. The Hon'ble Supreme Court applied the pay and recovery doctrine and directed the Insurance Company to pay the claimant and thereafter, recover the same from the insured.

8.Applying the dictum laid down by the Hon'ble Supreme Court in the judgment cited supra, this Court is of the considered view that the finding of the Tribunal under the impugned Award does not call for any interference. Accordingly, there is no merit in the instant appeal and the appeal shall stand dismissed. However, there shall be no order as to costs. The Appellant is directed to deposit the amount awarded by the

Tribunal after deducting the amount already deposited, if any, together with interest at 6% per annum from the date of claim till the date of realization to the credit of M.C.O.P.No.1229 of 2001 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is permitted to withdraw the said sum by filing an appropriate application. Consequently, connected miscellaneous petition is closed.

pam

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Principal District Court,
Krishnagiri.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.NO.63196

+1cc to Mr.T.Panchatsaram, Advocate SR.NO.63300

EV(CO)

sm:4.10.2018

सत्यमेव जयते

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