

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2936 of 2010

M/s.ICICI Loimbard General
Insurance Company Ltd.
Chennai-600 028.

... Appellant/2nd Respondent

..Vs..

1.R.Mohanraj
2.M.Dayalan

... Respondent 1/Petitioner

..Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2010 made in MCOP.No.447 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court) at Dharmapuri.

For Appellant : Mrs.R.Srividhya
For Respondents : Mr.K.Prasanna for
Mr.Sri ram R1
Exparte R2

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the Award dated 30.01.2010 passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court at Dharmapuri) in M.C.O.P.No.447 of 2006.

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

2. The first respondent sustained injuries as a result of an accident that took place on 13.06.2005 caused by a tipper lorry bearing registration No.TN-22-Y-7155 owned by the second respondent and insured with the appellant. The first respondent preferred a compensation claim before the Motor Accident Claims Tribunal in M.C.O.P.No. 447 of 2006 seeking a compensation of Rs.7,60,000/- which was restricted to Rs.5,00,000/-. The Motor Accident Claim Tribunal by its Award dated 30.01.2010 in M.C.O.P.No.447 of 2006 directed the appellant to pay the first

respondent a sum of Rs.1,11,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 30.01.2010 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.447 of 2006, the instant appeal has been filed by the insurance company.

4. Heard Mrs.Srividhya, learned counsel for the Appellant and Mr.K.Prasanna, learned counsel for the second respondent insurance company.

5. According to the learned counsel for the appellant, the first respondent was only a gratuitous occupant in the lorry bearing registration No.TN22-Y-7155 insured with the appellant and no premium has also been paid by the second respondent to cover an alleged cleaner in the vehicle and therefore, the Appellant cannot be held liable.

6. Per contra, the learned counsel for the second respondent would submit that the first respondent was not a gratuitous occupant in the lorry, but was a cleaner travelling in the lorry who was employed by the second respondent and therefore, the tribunal has rightly awarded compensation to the first respondent.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The nature of injuries sustained by the first respondent has not been disputed by the appellant before the tribunal.

b) Under section 147 (b)(i) of the Motor Vehicle Act, the policy of insurance must be a policy which insures against any liability in respect of the death or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle. In the instant case, the first respondent was travelling as a cleaner in the lorry insured with the Appellant. No contra evidence has been produced by the Appellant before the tribunal to disprove the claim of the first respondent that he was a cleaner, even though they have pleaded that the first respondent was only a gratuitous occupant in the lorry.

c) Whether the premium is paid or not, as per section 147 of the Motor Vehicle Act, the insurance coverage should cover an authorized representative carried in the vehicle. Being a cleaner employed by the second respondent, the appellant is certainly an authorized representative of the insured. In such circumstances, the Tribunal has rightly awarded compensation to the first respondent, being a cleaner employed with the second respondent.

d) Further the Tribunal has also given a finding that sufficient premium was paid by the second respondent to give coverage for the cleaner of the lorry involved in the accident.

8. In the light of the above observations, this court is of the considered view that there is no merit in the instant appeal. Accordingly appeal is dismissed without costs.

9. It is represented by the learned counsel for the Appellant that the amount awarded by the Tribunal together with interest has already been deposited by the Appellant. The first respondent is permitted to withdraw the amount deposited by the Appellant with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kyl/nl

To

1.The the Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court at Dharmapuri

copy to:

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

+lcc to Mrs.R.Srividhya, Advocate sr.no.65266

+lcc to Mr.Mukund R.Pandiyan, Advocate sr.no.65637

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