

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3493 of 2009

and

M.P.No. 1 of 2009

The New India Assurance Company Ltd.,
No.139, Kumaran Road,
Tiruppur.

...Appellant/2nd Respondent

Vs

1. Ayyadurai ...R1/Petitioner

2. M/s.Basic Clothing
156/15, K.N.P. Subramani Nagar,
2nd Street, Pudur Road,
Tiruppur Taluk.

[R-2 set exparte in the lower Court] ... Respondent No.2/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.12.2008 made in M.C.O.P.No. 691 of 2006 on the file of the Motor Accident Claims Tribunal (Addl.Dist.Judge) (Fast Track Court No.4), Coimbatore camp at Tiruppur.

For Appellant : M/s.R.Sreevidhya

For Respondents : Mr.S.S.Swaminathan [for R1]

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J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 17.12.2008 passed by the Motor Accident Claims Tribunal (Addl.Dist.Judge) (Fast Track Court No.4), Coimbatore camp at Tiruppur in M.C.O.P.No. 691 of 2006.

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

The first respondent sustained injuries as a result of an accident caused by a Mini Door Auto bearing Registration No. TN-39-Z-0059 owned by the second respondent and insured with the Appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal (Addl.Dist.Judge) (Fast Track Court No.4), Coimbatore camp at Tiruppur in M.C.O.P.No. 691 of 2006 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal, by its Award dated 17.12.2008 in M.C.O.P.No. 691 of 2006, directed the Appellant to pay the first respondent a sum of Rs.3,78,214/- 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 17.12.2008 passed in M.C.O.P.No.691 of 2006, the instant Appeal has been filed by the Appellant/Insurance Company.

4. Heard Ms.R.Sreevidhya, learned Counsel for the Appellant and Mr.S.S.Swaminathan, learned Counsel for the first respondent.

5. According to the learned Counsel for the Appellant, the first respondent was not an employee of the second respondent but was an employee of another company by name Sabari Compacting. According to her, despite the said fact, the Tribunal has erroneously awarded compensation to the first respondent who was not an employee of the second respondent. Further, she would contend that the Appellant is not liable to pay compensation to the first respondent who was traveling in the Mini Door Auto owned by the second respondent and insured with the Appellant, as he was not an employee of the second respondent.

6. Per contra, the learned counsel for the first respondent/ claimant would submit that it is an admitted fact that the first respondent was traveling in the Mini Door Auto insured with the Appellant at the time of accident. The Tribunal has also given a clear finding under the impugned Award that the driver of the Mini Door Auto is only at fault. According to the learned counsel for the first respondent, the first respondent was traveling in the vehicle along with the goods carried in the vehicle and he was employed only by the second 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) It is an undisputed fact that the first respondent was traveling in the Mini Door Auto insured with the Appellant at the time of the accident.

(b) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the Mini Door Auto, the accident had happened, resulting in injuries to the first respondent.

(c) Further, under the Insurance Policy, which is confirmed by the deposition of R.W.1 gives coverage for three persons traveling in the Mini Door Auto. Admittedly, only the driver as well as the first respondent were traveling in the Mini door Auto goods vehicle. Therefore, it can be inferred that there is Insurance coverage for the claim of the first respondent.

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, the Appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

ebsi/bri

To

1. The Additional District Judge,
Fast Track Court No.4,
Motor Accident Claims Tribunal
Coimbatore camp at Tiruppur.

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

+1cc to Mr.R.Sreevidhya, Advocate SR.No.62563

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.61819

C.M.A.No.3493 of 2009

GMV (16/10/2018)



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