IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2019

DELIVERED ON : 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NOS.1483 AND 1650 OF 2006

Natarajan ... Appellant in C.M.A.No. 1483 of 2006

Ramasamy ... Appellant in C.M.A.No. 1650 of 2006

Vs

1. C.P.Gunasekaran

2. The Oriental Insurance Co.Ltd., Hosur, Salem District.

... Respondents in both appeals

C.M.A.No.1483 of 2006 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.11.2003 made in MCOP No.1412 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District Court / Fast Track Court No.I), Salem.

C.M.A.No.1650 of 2006 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.11.2003 made in MCOP No.1413 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District Court / Fast Track Court No.I), Salem.

For Appellant in both appeals : Mr.N.S.Sivakumar

For Respondents in both appeals : No appearance for R1
Mr.S.S.Jeyaram for R2

COMMON JUDGMENT

The facts of the case in brief, are as follows:

On 16.06.1997, the appellants herein were travelling in the tempo bearing Reg.No.TN-29-Y-5551, belonging to the first respondent, along with goods from Hosur to Coimbatore. The driver of the tempo drove it in a rash and negligent manner. At about 4.00 a.m., when the tempo reached near Thethigiripatti in the Dharmapuri - Mecheri Road, it hit against the back side of a parked lorry. Due to the said impact, the appellants sustained grievous injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	OP No.	Amount of compensation (Rs.)
1483 of 2006	1412/1999	93,000/-
1650 of 2006	1413/1999	83,000/-

These amounts have been awarded, with interest at the rate of 9% per annum from the respective dates of petitions. The Tribunal fixed the liability on the part of the owner of the vehicle and accordingly directed the owner of the vehicle to pay compensation to the claimants.

2.Challenging the awards passed by the Tribunal, the appellants / claimants have come up with these appeals.

3.The learned counsel for the appellants has submitted that in the absence of any specific proof to uphold the contention of the Insurance Company that there was violation of policy conditions, the Tribunal ought to have fastened the liability upon the Insurance Company also. He also submitted that the Tribunal has not considered the materials and evidence in proper perspective in awarding the compensation; that the amounts awarded towards various heads are very low and hence the same needs to be enhanced.

4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has considered the materials and evidence in proper perspective and has rightly fixed the liability on the owner of the vehicle and hence the same does not require any interference in the hands of this Court.

5.There is no representation on behalf of the first respondent / owner of the vehicle.

6.Heard the learned counsel for the appellants and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tempo, is not in dispute. Now the issue to be decided is, who has to pay the compensation to the claimants, whether the Insurance Company or the owner of the vehicle? The contentions of the Insurance Company before the Tribunal is that the appellants have travelled in the tempo as unauthorised passengers; that the owner or his representative have not travelled in the vehicle with goods and hence the Insurance Company is not liable to pay compensation to the claimants. The Tribunal noted certain discrepancies in the evidence of the claimants. The Tribunal has analysed the matter in detail and has given a finding that both the injured travelled in the vehicle at the relevant point of time; that they are the permanent residents of Coimbatore; that they travelled to their native place (Coimbatore) in the tempo by making separate payments. Since it has been categorically proved that the appellants have travelled in the tempo as unauthorised passengers, the Tribunal held that only the owner of the tempo is liable to pay compensation to the claimants and exonerated the Insurance Company from paying compensation.

8.In similar circumstances, this Court, in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), exonerated the Insurance Company from paying compensation, on the ground that the insurer could not be made liable to pay the compensation to an unauthorised or a gratuitous passenger in a goods vehicle. Hence, the direction of the Tribunal directing the owner of the vehicle to pay compensation and exonerating the Insurance Company from payment of compensation, does not require any interference. The awards passed by the Tribunal are also confirmed, as the amounts granted under various heads are very reasonable.

9.In the result, the Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal,
   Additional District Judge,
   Fast Track Court No.I,
   Salem.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.63962
+2cc to Mr.S.S.Jeyaram, Advocate, S.R.No.63679 & 63678
+2cc to Mr.N.S.Sivakumar, Advocate, S.R.No.63620 & 63621

C.M.A.Nos.1483 and 1650 of 2006

MR(CO)
CS/16/12/2019