IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1457 of 2007

National Insurance Company Ltd,
Motor Third Party Claims Office,
66, Greams Road, Chennai-6. .. Appellant

Vs.

1.R.Velu
2.V.Nageshwara Rao .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2006 made in M.C.O.P.No.165 of 2000 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellant : Mr.D.Bhaskaran
For R1 : Mr.P.M.Duraiswamy
No Appearance for R2

J U D G M E N T

Questioning the liability of the appellant insurance company to pay compensation to the first respondent/claimant, the present Civil Miscellaneous Appeal came to be filed.

2.The first respondent/claimant by name, R.Velu, aged 22, working as a coolie, earning a sum of Rs.150 per day, met with an accident on 09.07.1999 at about 1.00 p.m, while travelling in a lorry along with others, bearing Registration No.TN22 A 9099. According to him, when the lorry was nearing Kamaraj Nagar, its driver applied sudden brake, due to which, the said lorry dashed against the railway bridge. As a result of the same, the first respondent/claimant and others were thrown out from the lorry, resulting in multiple injuries to them. Hence, he filed a claim petition claiming a sum of Rs.2,00,000/- as compensation. The Tribunal, based on the oral and documentary evidence, awarded a compensation of Rs.41,000/- with interest at 7.5% from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the first respondent/claimant/injured has travelled in the goods vehicle as an unauthorised passenger and hence, the Insurance Company cannot be fastened with the liability to pay the compensation. The learned counsel further submitted that as per the permit, insurance policy conditions and the Motor Vehicles Act, the goods vehicles shall be used to carry goods only and the same are prohibited to transport passengers.

4.The learned counsel for the first respondent submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence, the same does not require any interference in the hands of this Court.

5.Though this appeal was admitted way back in the year 2009, the appellant has not taken proper steps to serve notice on the second respondent/owner of the vehicle. However, this Court, considering the passage of time, proceeds to dispose of this appeal on merits, after hearing the learned counsel for the appellant and the learned counsel for the first respondent and upon perusal of the materials available on record.

6.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

7.There is no dispute with regard to the factum of accident and coverage of the offending vehicle under the insurance policy. The main contention put forth on behalf of the appellant Insurance Company is that the first respondent/claimant has violated the conditions laid down in the policy and he has been travelling in the lorry as an unauthorised passenger, on the date of accident. Considering the materials and evidence available on record, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. After having observed that the first respondent/claimant travelled in the said lorry as an unauthorised passenger, the Tribunal has directed the appellant insurance company to pay compensation. Such course adopted by the Tribunal, in the opinion of this Court, is not sustainable, in view of the decision rendered by the Supreme Court in Shivaraj v. Rajendra, [2018 (2) TN MAC 273 (SC)].

8.In that case, the Tribunal, holding that the claimant therein travelled as a loader in the tractor and the insurance policy covered risk of 1 + 4, held the insurer liable to pay compensation. On appeal, the High Court held that the tractor was insured only for agricultural purpose and not for carrying goods and since the tractor could accommodate only one person, ie., driver, but the claimant travelled in the tractor as a passenger in breach of policy conditions, the insurer is not liable to indemnify the owner. Thereafter, on appeal, the Hon'ble Supreme Court held that the High Court ought to have directed the insurer to pay the compensation to the claimant and recover the same in consonance with the view taken in the case of National Insurance Co.Ltd. v. Swaran Singh, reported in 2004 (3) SCC 297, Mangla Ram v. Oriental Insurance Co.Ltd., reported in 2018 (1) TN MAC 681 (SC) and Manuara Khatun v. Rajesh Kumar Singh, reported in 2017(4) SCC 796.

9.Following the aforesaid decision and also in the light of the admitted fact that the first respondent/claimant travelled in the lorry as an unauthorised passenger and the vehicle is covered by a valid insurance policy, this Court deems it fit and proper to direct the appellant Insurance Company to pay the compensation to the first respondent/claimant and thereafter recover the same from the second respondent/owner of the vehicle.

10.In the result, the Civil Miscellaneous Appeal is allowed to the extent as indicated above. No costs. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same, from the owner of the vehicle in accordance with law. On such deposit being made, the Tribunal shall transfer the amount lying in the deposit to the bank account of the first respondent/claimant through RTGS, within a period of one week thereafter.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

gbi / srk

To

1.The Judge,
Motor Accidents Claims Tribunal,
Small Causes Court No.II,
Chennai.

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

+1 cc to M/s.D.Bhaskaran Advocate sr60962

C.M.A.No.1457 of 2007

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