

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NOS.2267 OF 2006 AND 3203 OF 2008

AND

M.P.NOS.1 OF 2006 AND 1 OF 2008

Branch Manager,
National Insurance Co.Ltd.,
Branch Office-I,
No.1, Govindasamy Pillai Street,
Near Old Bus Stand,
Salem - 636 001.

.. Appellant in both CMAs
(2nd Respondent in both the MCOPs

Vs.

J.Murugesh Babu .. 1st Respondent in CMA.No.2267 of 2006/
Claimant in MCOP.No.140 of 2005

M.Balu .. 1st Respondent in CMA.No.3203 of 2008/
Claimant in MCOP.No.139 of 2005

Bhopathiammal .. 2nd Respondent in both CMAs/
1st Respondent in both the MCOPs

Common Prayer:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.11.2005 made in M.C.O.P.Nos.140 and 139 of 2005 respectively on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate No.I, Dharmapuri, Krishnagiri.

For Appellant : Mr.Arun Kumar
in both CMAs.

For Respondents : Mr.Mukund R.Pandian (for R1)
in both CMAs. : Mr.P.Jagadeesan (for R2)

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals have been filed by the Insurance Company against the award, dated 23.11.2005 made in M.C.O.P.Nos.139 and 140 of 2005 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate No.I, Dharmapuri, Krishnagiri.

2. The appellant has raised the following grounds in CMA No.2267 of 2006 to set aside the award passed by the Tribunal.

3. It is submitted that the 2nd respondent in both the CMAs namely Mrs.Bhopathiammal has violated the law, permit and policy conditional by carrying unauthorized persons in goods vehicle at the time of accident and hence the appellant is not liable to pay the compensation. He further submitted that the Claims Tribunal erred in not placing reliance on the evidence of R.W.1 and Exs.R1 and R2 to hold that the appellant is not liable to pay compensation for passengers in the goods vehicle and also failed to notice that P.Ws.1 and 2 have not substantiated through unassailable proof that they are authorized that the Motor Vehicle Act to travel in the goods vehicle. Hence, the appellant states that they are not liable to pay compensation without any additional premium being paid by the claimant. The vehicle is designed only to carry persons inclusive of driver (1+1). The 1st respondent has alleged that he is traveling as a companion to carry goods.

4. The case of the claimants/1st respondent in both the appeals before the Court below was that the 1st respondent/claimant in CMA.No.2267 of 2006 is a Manager of his father's Iron Arch Grill Welding shop at Kundarapalli and thus earning Rs.5,000/- per month and the 1st respondent/claimant in CMA.No.3203 of 2008 is a labour of the same shop.

5. On 13.11.2004, the claimants were traveling in a Tempo bearing Registration No. TN 38 9619 along with iron Rods, Angels and other iron etc. from Salem to go to Kundarapalli. On 14.11.2004, at about 2.00 am, when they were proceeding in Salem to Krishnagiri NH 7 road towards Krishnagiri at Pananthoppu Aariappan Kottai near Avathanapatti temple, the driver of the said Tempo driven the same in a rash and reckless manner, without observing the traffic rules at uncontrollable speed. All of a sudden, a lorry which was coming in a opposite direction turned the Tempo on the left side, and due to which the tempo toppled down on the left side and caused accident. As a result, the claimants sustained grievous injuries all over the body. Hence, the claimants (Manager and his assistant) filed claim petitions before the learned Chief Judicial Magistrate - I, Krishnagiri, claiming compensation.

6. A counter was filed by the appellant, denying all the averments and stated that the said Tempo Vehicle is a goods carriage was deliberately allowed to carry unauthorised passengers including the claimants in violation of the policy condition. Hence, the appellant is not liable to pay compensation. He further submitted that the claimant has to prove the age and other necessary particulars beyond reasonable doubts.

7. On the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P13 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 and R2 were marked.

8. After considering the materials on record, the Court below allowed both the petitions and awarded a sum of Rs.12,400/- to the 1st respondent/claimant in CMA.No.3203 of 2008 and Rs.1,95,200/- to the 1st respondent/claimant in CMA.No.2267 of 2006 with interest at the rate of 9 %.

9. Aggrieved by the award, the appellant/Insurance company is before this Court.

10. The learned counsel for the appellant/Insurance Company would submit that the claimants had traveled in the goods vehicle. Hence, they are not entitled to any compensation from them.

11. This Court finds that the policy taken from the appellant Insurance Company is a package policy and it is covered for the persons who were accompanied to carry the goods in the said vehicle. Hence, the Insurance company is liable to pay the compensation to the claimants.

12. The learned counsel for the appellant however submitted that even though it covers the owner of the vehicle and it does not cover the employee of the said owner as the vehicle belongs to the third party who also injured in the said vehicle.

13. On a perusal of the materials, this Court is of the view that the policy covers for the owner of the goods viz., J.Murugesh Babu and hence this Court is not inclined to interfere with the finding of the Court below and as such a compensation of a sum of Rs.1,95,200/- is just and reasonable and hence it is confirmed.

14. Insofar as the labour who is accompanying to carry goods in the same vehicle, there was no evidence to show that the said person was employed as a labour in the said company or a labour of the said vehicle owner. Hence, this Court is of the view that the award of the Tribunal has to be set aside and the

labour is not entitled to any compensation.

15. In view of the above, the appeal in CMA.No.2267 of 2006 is dismissed and the appeal in CMA.No.3203 of 2008 is allowed.

16. Accordingly, the appellant Insurance Company is directed to deposit a sum of Rs.1,95,200/- to the claimant J.Murugesh Babu with interest at the rate of 9 % per annum from the date of petition till the date of realisation, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant J.Murugesh Babu is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

1. The Chief Judicial Magistrate No.I,
Motor Accident Claims Tribunal,
Dharmapuri, Krishnagiri
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

+2cc to Mr.Arun Kumar, Advocate, S.R.No.103701 & 130702
+2cc to Mr.Mukund R.Pandian, Advocate, S.R.No.103728 & 103729
+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.103484

C.M.A.Nos.2267 of 2006 and 3203 of 2008
and M.P.Nos.1 of 2006 and 1 of 2008

RSK(CO)
CS/15/10/2020