

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.238 and 239 of 2007
and M.P.Nos.1 and 1 of 2007

The Branch Manager,
National Insurance Co.Ltd.,
Thiruvarur.

... Appellant /2nd respondent
in both appeals

Vs

Selvarani

... 1st respondent/petitioner
in C.M.A.No.238 of 2007

Laxmi

... 1st respondent /petitioner
in C.M.A.No. 239 of 2007

The Commissioner,
Thiruvarur Municipality,
Thiruvarur Taluk.

... 2nd respondent/1st respondent
in both appeals

C.M.A.No.238 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.09.2004 made in MCOP No.11 of 2003 on the file of the Motor Accidents Claims Tribunal, Thiruvarur.

C.M.A.No.239 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.10.2004 made in MCOP No.35 of 2003 on the file of the Motor Accidents Claims Tribunal, Thiruvarur.

For Appellant : Mr.S.Arunkumar
in both appeals

For Respondents : Mr.N.Sathiyamoorthy for R1
in both appeals in C.M.A.No.238 of 2007

Mr.D.Balaraman for R1 in
C.M.A.No.239 of 2007
R2 (in both the appeals)-served-No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company against the awards of a sum of Rs.9,000/- towards compensation to the first respondent in C.M.A.No.238 of 2007 and Rs.40,000/- towards compensation to the first respondent in C.M.A.No.239 of 2007, respectively, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:

On 01.05.2002, the first respondent in these appeals and others were travelling in the tempo mini van bearing Reg.No.TN-50-A-0265 belonging to the second respondent herein, towards Kodikalpalayam area for the purpose of carrying out cleaning work, on account of Thiruvavarur Theru. When the van reached near Virupachi Nadappu, at about 3.00 p.m., the driver of the van drove it in a rash and negligent manner. Due to the said impact, the first respondent in these appeals and others sustained injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.9,000/- and Rs.40,000/- respectively, with interest at the rate of 9% per annum from the respective dates of the petitions.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the injured have travelled in the vehicle as unauthorised passengers, since the driver of the tempo mini van bearing Reg.No.TN-50-A-0265, was not having valid and effective driving license and hence the Insurance Company is not liable to pay any compensation to the claimants.

5.The learned counsel for the first respondent in these appeals have 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.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

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

8.It was put forth on behalf of the second respondent before the Tribunal that at the time of accident, a small boy came

across the road and because of the same, the accident had occurred. It was put forth on behalf of the Insurance Company that the first respondent had violated the conditions laid down in the policy, since the driver of the vehicle was not possessing the valid driving license and apart from that, they have allowed more passengers to travel in the van, than the one prescribed as per the policy conditions. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van and fixed the liability on the appellant Insurance Company. But the Tribunal ought to have permitted the appellant Insurance Company to pay the amount to the claimants and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions, since the driver of the vehicle was not possessing the valid driving license and they have allowed more passengers to travel in the van, than the one prescribed as per the policy conditions.

9. In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amounts.

Sd/-
Asst.Registrar (CSIX)

/true copy/

Sub Asst. Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Thiruvapur.

copy to

The Section Officer,
VR Section, Madras High Court.

+1 cc to Mr.D.Balaraman Advocate sr60989

C.M.A.No.238 and 239 of
2007
and M.P.Nos.1 and 1 of 2007

gj (co)
aa24/02/2020