

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 20.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. No.2288 of 2005 and

C.M.P.No.1226 of 2005

New India Assurance Co. Ltd. Arni

.... Appellant/2nd Respondent

Versus

1. R. Pari

....1st Respondent/Petitioner

2. S. Imthiyass

... Respondent/Respondent

Prayer: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.287 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated 29.10.2004

For Appellant :Mr.M. Krishnamoorthy

For 1st Respondents : Mr. V.R. Appaswamee

J U D G M E N T

This appeal has been filed against the Judgment and Decree made in M.A.C.T.O.P.No.287 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated 29.10.2004

2. The brief facts of the case are as follows:-

On 27.04.2001 at about 12.30 p.m., the claimant was returning to his home after attending marriage of relative and was travelling in a TATA 608 van bearing Registration No.TN-31-A-3533, at that time a van which was proceeding in the Kanchipuram-Vandavasi Road, between Dusi and Maamandoor, the driver of the said van, driven in a rash and negligent manner, hit against the tree on the left side of the road, all the persons who travelled in the van including driver of the van, were sustained injuries. Hence, the first respondent herein filed M.A.C.T.O.P.No.287 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated seeking compensation for a sum of Rs.5,00,000/- The Tribunal, on

a consideration of oral and documentary evidence, has awarded a sum of Rs.20,000/- payable with interest at the rate of 7.5% per annum.

3. Challenging the same as excessive and disproportionate, the appellant has filed this appeal.

4. After analyzing the facts it is seen that on the date of occurrence, several number of persons were travelled as passengers in the goods carriage vehicle which is against the violation of policy and permit condition. Hence, the appellant/Insurance company is not liable to pay the compensation.

5. It is also seen that the Tribunal, after analyzing the evidence and documents placed before it, has observed the fact that the goods carriage vehicle was carrying the passengers, for which, they are not allowed as per the policy condition. The Tribunal has fixed the liability on the owner of the vehicle and to pay the compensation and directed the Insurance Company to pay the compensation to the claimants and recover the same from the owner of the vehicle.

6. Heard the arguments of the learned counsel for the appellant and perused the materials available on record.

7. It is seen from the records that many persons including the first respondent herein/claimant, who had met the accident on 27.04.2001, have filed M.C.O.P.Nos. 405, 423, 406, 408, 322, 285 and 317 of 2001, before the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated 29.10.2004, in which, this Court had allowed the petition, vide order dated 20.09.2018. The relevant portion of the said order is extracted hereunder:

10. In the result, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11. The second respondent/owner of the vehicle is directed to deposit the award amount awarded by the Tribunal with interest and costs, before the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon.

8. In view of the Judgment pronounced by this Court in respect of the same accident, this Court does not intend to take a different view in this matter.

9. In the result,

(a) this appeal is allowed.

(b) the second respondent/owner of the vehicle is directed to deposit the award amount awarded by the Tribunal with interest and costs, less the amount already deposited, if any, within a period of 8 weeks from the date of receipt of copy of this Judgment.

(c) On such deposit, the first respondent is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(e) There will be no order as to costs.

(f) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To.

1.The Motor Accident Claims,
Cheyyar, Tiruvannamalai District.

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.15404

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srg 03/06/2019