IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.2552 of 2005
and
C.M.P.No.13366 of 2005

New India Assurance Co. Ltd., Arni
... Appellant/2nd Respondent

Vs.

1.Dharani .... 1st Respondent/Petitioner
2.S.Imthiyass ...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2004 in M.C.O.P.No.437 of 2001 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

For Appellant : Mr.Parthiban

For R1 : Mr.V.R.Appaswamee

For R2 : Mr.K.G.Senthil Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant Insurance Company against the judgment and decree dated 29.10.2004, passed in M.C.O.P.No.437 of 2001 on the file of the 'Motor Accident Claims Tribunal (Subordinate Court), Cheyyar' (hereinafter referred to as 'the Tribunal).

2.The case in brief is as follows:

On 27.04.2001, the 1st respondent and his family members were returning from a marriage in a van (TATA-608) bearing Registration No.TN31-A-3533, insured with the appellant Insurance Company, on Kancheepuram-Vandavasi Main Road. At about 12.30 p.m., when they were amidst Dusi and Maamandoor, the driver of the van drove the vehicle in a rash and negligent manner and dashed against a tree. Due to the said impact, the van subverted and many of the passengers, including the 1st respondent/claimant sustained injuries. Immediately, the 1st respondent was taken to the Government Hospital, Kancheepuram, and was given treatment. Later, he filed a claim petition claiming a compensation of

Rs.1,50,000/- before the Tribunal, which awarded a sum of Rs.15,000/- with interest at 9% p.a. from the date of claim petition till the date of decree and thereafter at 6% p.a. till the date of deposit of entire award amount. Aggrieved over the same, the insurance company has filed the present appeal.

3.The learned counsel appearing for the appellant has disputed only the liability of the insurance company to pay compensation. According to him, the vehicle involved in the accident is a goods vehicle, in which, fifty persons had travelled on the date of accident, contrary to the conditions adumbrated in the insurance policy. However, the Tribunal overlooked this aspect and erred in fastening the liability on the appellant Insurance Company, which is unsustainable in law. Hence, the learned counsel prayed to absolve the appellant insurance company of its liability to pay compensation to the first respondent/claimant first and thereafter, recover the same from the owner of the vehicle.

4.Per contra, the learned counsel for the 1st respondent/claimant submitted that the Tribunal has considered all the evidence and materials on record and has rightly fastened the liability on the appellant insurance company and awarded just compensation. Hence, the same do not warrant any interference by this Court.

5.The learned counsel for the 2nd respondent submitted that the 2nd respondent (owner of the van) has rented out his van for carrying goods, which was wrongly used for transporting passengers, on the date of accident and thus, he pleaded ignorance about the usage of the van wrongly. Hence, the 2nd respondent cannot be made liable to pay compensation.

6.Heard the learned counsel for all the parties and perused the materials available on record.

7.On a perusal of the award, it is seen that the Tribunal, after having considered all the evidence and materials on record, has rendered its finding on negligence that the accident had occurred due to the negligence act on the part of the driver of the van, in which, the first respondent/claimant travelled on the date of accident. Thereafter, the Tribunal having taken note of the fact that the van, being a goods vehicle, was used to transport passengers, in violation of the policy conditions, however, the insurance policy was in force at that time, has arrived at the conclusion that the appellant insurance company has to pay compensation initially and then recover the same from the owner of the vehicle. However, in the result portion of the judgment, the Tribunal has omitted to incorporate the right of the appellant insurance company to recover the compensation from the owner of the vehicle. Hence, the judgment and decree of the Tribunal is modified to that effect alone and the same is accordingly, modified.

8.There is no dispute with regard to the quantum of compensation and the rate of interest awarded by the Tribunal and hence, the same is hereby confirmed as such.

9.In fine, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

10.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. On such deposit being made, the Tribunal shall transfer the same to the Savings Bank account of the 1st respondent/claimant, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

mkn/rk

To

1.The Motor Accident Claims Tribunal
(Subordinate Court),
Cheyyar.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.62889

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BS(CO)
CB(14/09/2020)