

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2801 of 2007
and M.P.No.2 of 2007

The Oriental Insurance Co.Ltd.
Gobichettipalayam.

...Appellant/3rd Respondent

Vs

1.Thangamani

...1st Respondent/Petitioner

2.P.Arumugam

3.T.C.Ramaswamy

...2nd & 3rd Respondent/1 & 2 Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.11.2004 made in MCOP No.81 of 2004 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Erode.

For Appellant : Mr.S.Arunkumar

For Respondents: No appearance for R1 and R3

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.27,500/- towards compensation to the first respondent / claimant, due to the injuries suffered by her in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 08.06.1997, at about 16.30 hours, the first respondent and her relatives were travelling in the tempo van bearing Reg.No.TN-33-C-4870 from Avalpoondurai to Thoppupalayam in the Erode-Kangayam Main Road. When the tempo van reached near Vellagoundenvalasu, the driver of the van drove it in a rash and negligent manner, due to which the van turned turtle. Due to the said impact, the first respondent sustained grievous injuries all over the body. She filed a claim petition before the Tribunal. On consideration of the materials and

evidence available on record, the Tribunal awarded a total compensation of Rs.27,500/- with interest at the rate of 9% per annum from the date of petition.

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

4.When this appeal was taken up, the learned counsel for the appellant Insurance Company has produced a copy of the judgment of this Court dated 20.02.2012 in CMA Nos.3149 to 3152 of 2003, relating to the claims arising out of the same accident which occurred on 08.06.1997.

5.The learned counsel for the appellant Insurance Company, relying upon the said judgment of this Court, submitted that this Court has passed the said judgment directing the claimants to recover the compensation from the owner of the vehicle by initiating appropriate proceedings, taking note of the submission of the learned counsel for the appellant Insurance Company that the Tribunal has erred in fastening the liability upon the Insurance Company in view of the fact that the claimants were gratuitous passengers in the goods carrying vehicle, after considering the materials and evidence available on record and also relying upon the relevant case laws.

6.There is no appearance on behalf of the first respondent / claimant.

7.This Court has perused the judgment passed by this Court dated 20.02.2012 in CMA Nos.3149 to 3152 of 2003, relating to the claims arising out of the same accident which occurred on 08.06.1997. After considering the matter in detail, this Court passed the judgment holding that only the owner of the vehicle can be held liable to pay the award amount and the Insurance Company cannot be directed to satisfy the award and thereafter recover the same from the owner and accordingly, set aside the award of the Tribunal in so far as it holds the Insurance Company liable to pay the amount to the claimants and to recover the same amount from the owner of the vehicle.

8.In the present case, it is seen that the Tribunal has ordered to pay the compensation jointly and severally by the second respondent (driver of the van), third respondent (owner of the van) and the appellant Insurance Company. The Tribunal has not ordered for pay and recovery. But, in respect of the claims arising out of the same accident, this Court has categorically held that only the owner of the vehicle is liable to pay compensation and accordingly set aside the award of the Tribunal for those claimants in so far as it holds the Insurance Company liable to pay the amount to the claimants and to recover

the same from the owner of the vehicle.

9.Hence, while confirming the quantum of compensation awarded by the Tribunal, it is hereby ordered that only the owner of the tempo van is liable to pay compensation and accordingly, the first respondent / claimant can recover the compensation from the owner of the tempo van by initiating appropriate proceedings. The amount, if any deposited by the Insurance Company, shall be refunded to the appellant.

10.The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KM

To

The Motor Accidents Claims Tribunal,
I Additional District Judge, Erode.

Copy To : The Section Officer,
VR Section, Madras High Court.

+lcc to Mr.S.Arunkumar, Advocate SR.No.52973

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RJI (CO)
GMY (16/10/2019)

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