

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NOS.1106 AND 1107 OF 2013

AND

M.P.NOS.1,1 OF 2013

C.M.A.No.1106 of 2013:

The Branch Manager,
United India Insurance Company Limited,
Tindivanam. ... Appellant/2nd Respondent

Vs.

1.Mainathan ... Respondent/Petitioner

2.G.Chandrasekaran ... Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.11.2006 passed in M.C.O.P.No.218 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Tindivanam.

For Appellant : Mr.S.Ramalingam

For R1 : Mr.P.Mani

C.M.A.No.1107 of 2013:

The Branch Manager,
United India Insurance Company Limited,
Tindivanam. ... Appellant/2nd Respondent

Vs.

1.Chakrapani Alias Charkkarai ... Respondent/Petitioner

2.G.Chandrasekaran ... Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.11.2006 passed in M.C.O.P.No.219 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Tindivanam.

For Appellant : Mr.S.Ramalingam

For R1 : Mr.P.Mani

C O M M O N J U D G M E N T

The appellant in both the appeals is the second respondent in M.C.O.P.Nos.218 and 219 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Tindivanam. The first respondent in both the appeals filed the claim petitions under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,00,000/- and Rs.5,00,000/- respectively for the injuries sustained by them in a road accident on 07.09.2002.

2. The case of the claimants is that on 07.09.2002, they were travelling as passengers in a tanker lorry bearing Registration No. TN 59 L 5393 on Tindivanam - Villupuram G.S.T. Road. About 8.00 P.M., when the lorry was nearing a Petrol Bunk, the driver of the lorry drove the same rashly and negligently, as a result of which, the lorry toppled and the claimants sustained injuries all over their body. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the second respondent was the cause of the accident and that since the said lorry was insured with the present appellant / United India Insurance Company Limited, the owner and insurer of the lorry are jointly and severally liable to pay compensation.

3. The second respondent / owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / United India Insurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal Judge, Fast Track Court No.2, Tindivanam, after analysing the evidence on record, awarded a compensation of Rs.66,300/- and Rs.36,300/- respectively to the claimants in M.C.O.P.Nos.218 and 219 of 2006 together with interest at the rate of 7.5% per annum. The Tribunal however held that since the claimants travelled in the tanker lorry as gratuitous passengers, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the vehicle, as there is

violation of policy conditions. Aggrieved over the orders passed by the Tribunal, the present appellant / United India Insurance Company Limited, has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Heard the learned counsel for the appellant and learned counsel for the first respondent and perused the materials on record.

5. The evidence adduced on the side of the claimants shows that they were gratuitous passengers in the tanker lorry and therefore the Insurance Company cannot be fastened with liability to pay the compensation. The Tribunal had committed an error in directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle, especially when there is violation of policy conditions. Therefore the order of the Tribunal is liable to be set aside.

6. As far as quantum of compensation is concerned, the award passed by the Tribunal cannot be found fault with and the Tribunal in fact taking into consideration the nature of injuries sustained by the claimants awarded the compensation amount, which is just and reasonable. Therefore the award passed by the Tribunal is upheld.

7. In the result,

(i) The Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii) The order of the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle is set aside.

(iii) The appellant/United India Insurance Company Limited is exonerated from being paying the compensation amount.

(iv) The quantum of compensation passed by the Tribunal is upheld.

(v) The second respondent/owner of the tanker lorry is directed to pay the compensation amount of Rs.66,300/- and Rs.36,300/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.218 and 219 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Tindivanam, respectively within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the second respondent/
owner of the tanker lorry, the claimants are at liberty to
withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal Judge,
Fast Track Court No.2,
Tindivanam.

Copy To
The Section Officer,
VR Section, High Court,
Masras-104.

+lcc to Mr.S.Ramalingam, Advocate in sr.no.92230

C.M.A.Nos.1106 and 1107 of 2013

SVI (CO)
CS/05/06/2020