

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3337 of 2006

and

M.P.No.3 of 2006

The Oriental Insurance Co. Ltd.,
U.I.L. Building, No.8, Esplanade,
(Near) High Court,
Chennai - 108. Appellant/2nd Respondent

Vs.

1. Tmt.G.Kamalaveni
2. Y.Muthumari ... Respondents/Petitioner and First Respondents
(R2 set exparte)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment passed in M.C.O.P.No.305 of 1999 dated 01.11.2004 on the file of Motor Accidents Claims Tribunal (Additional District Judge), FTC-II, Kancheepuram.

For Appellant : Mr.J.Chandran

For R1 : Not ready in notice

For R2 : Set exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the order and decree dated 01.11.2004 passed by the Motor Accidents Claims Tribunal (Additional District Judge), FTC-II, Kancheepuram, in M.C.O.P.No.305 of 1999.

2.The case in brief is as follows:

On 23.05.1999, the first respondent/claimant along with others, was travelling in a Tempo Van bearing Regn.No.TN-74-7277 belonging to the second respondent and insured with the appellant insurance company from Madras towards Kancheepuram in the GWT Road. At about 8.30 p.m., the driver of the van drove it in a rash and negligent manner and dashed against a parked

lorry near Pompon Oil Mill. Due to the said impact, the occupants of the van, including the first respondent herein, sustained grievous injuries. The first respondent filed a claim petition claiming a compensation of Rs.1,00,000/-. On consideration of the evidence available on record, the Tribunal awarded a total compensation of Rs.6,000/- with interest at the rate of 9% per annum from the date of petition, to the first respondent, under the heads of special diet, medicines and pain and suffering. The said compensation was directed to be payable by the appellant insurance company first and thereafter, recover the same from the owner of the vehicle. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant submitted that at the time of accident, the first respondent had travelled as a passenger in the goods vehicle in violation of the policy conditions and hence, the appellant insurance company is not liable to pay any compensation. He also submitted that the compensation awarded by the Tribunal is against the pleadings, evidence and the laid principles of law.

4.Heard the learned counsel for the appellant.

5.Even though this appeal was admitted way back in the year 2006, the appellant Insurance Company has not taken any steps to serve papers to the other side at this length of time. However, considering the passage of time, this Court is inclined to proceed with the appeal on merits.

6.Ex.P1 is the true copy of the First Information Report, which shows that a complaint was given by one Balaji against the driver of the Tempo Van and the same was also registered. The driver of the van was not examined to speak about the accident. Considering the evidence of P.W.1-Ramachandran and also the evidence of P.W.2, the claimant herein, the Tribunal categorically came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of van, which this Court is not inclined to interfere.

7.The learned counsel for the appellant submitted that the first respondent/claimant had travelled in the goods vehicle as an unauthorised passenger in violation of the policy conditions and hence, the appellant insurance company is not liable to pay any compensation. After considering the same and also taking note of the fact that the insurance policy was in force, the Tribunal has directed the appellant insurance company to pay compensation first and then, recover the same from the second respondent/owner of the vehicle, in the manner known to law,

which finding, in the opinion of this Court, is perfectly right and hence, the same does not call for any interference.

8. With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has only awarded a meagre sum of Rs.6,000/- towards special diet, medicines and pain and suffering, by relying on the evidence and materials available on record, which also this Court is not inclined to interfere.

9. In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount 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 claimant is permitted to withdraw the same, on making proper application before the Tribunal. It is needless to state that the appellant insurance company shall recover the compensation paid to the claimant, from the owner of the vehicle in the manner known to law.

Sd/-

Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

raja/rk

To

1. The Motor Accidents Claims Tribunal
(Additional District Judge), FTC-II, Kancheepuram.

2. The Section Officer,
VR Section, High Court,
Madras - 104.

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VG II (CO)
GMY (19/08/2020)