

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.450 of 2007

N.Prem Kumar

...Appellant/2nd Respondent

...Vs...

1.V.Megaraj

2.K.A.Mujeep Rehman

3.M/s. United India Insurance Co. Ltd.,

Rep. by its Branch Manager,

448A, Dr. Nanjappa Road,

Coimbatore - 641 018.

... Respondents/Petitioners
and Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order passed in M.C.O.P.No.473 of 2004 dated 26.10.2005 on the file of the Motor Accident Claims Tribunal, (Principal Sub-Judge), Coimbatore.

For Appellant : Mr.Ishtiaq Ahamed

For Respondents : Mr.V.Bharathidasan
for S.Arun Kumar for R3
R1-Served-NA
R2-unserved

JUDGMENT

The appellant is the owner of the lorry bearing Registration No. TN 38 S 9909 and he is the second respondent in M.C.O.P.No.473 of 2004, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Coimbatore.

2. The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 in M.C.O.P.No.473 of 2004 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Coimbatore seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 27.01.2004, when he was travelling as a load man in the lorry bearing Registration No. TN 38 S 9909. His contention is that the driver of the said lorry drove the lorry rashly and negligently and hit another lorry bearing Registration No. TN 27 V 0729 parked on the left hand side of the road, as a

result of which, he sustained injuries all over his body. According to the first respondent/claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TN 38 S 9909 was the cause of the accident and that since the said lorry was insured with the third respondent United India Insurance Company Limited, Coimbatore, the appellant and the third respondent are jointly and severally liable to pay compensation to the him.

3. The learned Principal Subordinate Judge, Coimbatore after analysing the evidence on record, awarded compensation of Rs.1,60,430/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the first respondent/claimant. However, the tribunal held that since the first respondent/claimant was a gratuitous passenger in the lorry bearing Registration No. TN 38 S 9909, the third respondent/Insurance Company should pay the compensation amount in the first instance and then recover the same from the owner of the lorry bearing Registration No. TN 38 S 9909.

4. Aggrieved over the orders passed by the tribunal, the owner of the lorry bearing Registration No. TN 38 S 9909 has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.Ishtiaq Ahamed, learned counsel for the appellant would contend that since the injured was travelling as a load man in the lorry and was also sitting in the cabin, the tribunal was wrong in directing the Insurance Company to recover the compensation amount from the owner of the lorry bearing Registration No. TN 38 S 9909.

6. Per contra, the learned counsel appearing for the third respondent Insurance Company would contend that the tribunal has clearly held that the first respondent/claimant was a gratuitous passenger and therefore, the Insurance company cannot be held liable to pay the compensation to the first respondent/claimant.

7. A perusal of a copy of the FIR (Ex.P2) clearly shows that the first respondent/claimant was travelling in the lorry bearing Registration No. TN 38 S 9909 only as a load man on the date of the accident. Though, this was denied by the third respondent Insurance Company, no contra evidence was adduced on their side. Therefore, the tribunal was wrong in holding that the first respondent/claimant travelled in the lorry bearing Registration No. TN 38 S 9909 as a gratuitous passenger.

8. In United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle,

unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity, the Insurance Company would not be held liable to pay compensation."

9. In the instant case, the first respondent/claimant travelled as a load man within the permitted seating capacity of the vehicle and therefore, the liability to pay compensation to the first respondent/claimant could not be fastened only on the owner of the lorry bearing Registration No. TN 38 S 9909. The order of "pay and recover" passed by the tribunal is also wrong in the instant case as the claimant was travelling only as load man in the lorry within the permitted seating capacity of the lorry.

10. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) As far as pay and recovery is concerned, the order passed by the tribunal is set aside and the appellant herein is exonerated from paying compensation to the first respondent/claimant.

(iv) It is brought to the notice of this Court that the entire compensation amount is already deposited by the third respondent Insurance Company to the credit of M.C.O.P.No.473 of 2004, dated 26.10.2005, on the file of the Motor Accident Claims Tribunal, (Principal Sub-Judge), Coimbatore.

(v) The first respondent/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Principal Sub Court, Coimbatore.

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

+1cc to Mr.N.Ishtiaq Ahamed, Advocate Sr.4717

+1cc to Mr.S.Arunkumar, Advocate Sr.5155

C.M.A.No.450 of 2007

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