IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.515 to 517 of 2005

Divisional Manager - No.2,
United India Insurance Co. Ltd.,
104-A, Peramanur Road,
Salem - 636 007. ... Appellant in all the appeals

Vs.

1. M.Govindan ... 1st respondent in CMA.No.515/2005

G.Mathaiyan ... 1st respondent in CMA.No.516/2005

V.Murugan ... 1st respondent in CMA.No.517/2005

2. B.G.Pattabi ... 2nd Respondent in all the appeals

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 29.09.2003 made in M.C.O.P.Nos.1869 of 2002, 1870 of 2002 and 1871 of 2002 respectively, on the file of Motor Accidents Claims Tribunal, I Additional District Court, Dharmapuri.

For Appellant : Mr.M.B.Gopalan and
Mr.N.Vijaya Raghavan

COMMON JUDGMENT

These appeals have been filed by the Insurance Company against the judgment and decree dated 29.09.2003 passed by the Motor Accidents Claims Tribunal, I Additional District Court, Dharmapuri, in M.C.O.P.Nos.1869, 1870 and 1871 of 2002 respectively.

2.The facts of the case would run thus:

On 31.10.2001, the first respondent(s) and others were travelling in a Tempo bearing Regn.No.TN-29 E 2459 belonging to the second respondent herein and insured with the appellant insurance company, from Upparahalli to Palacode, with rice bags.

When the Tempo was nearing Bangaiyan Kottai in Palacode to A.Mallapouram Road, due to rash and negligent driving of its driver, it capsized, while avoid of hitting a road side tamarind tree. Due to the said impact, the first respondent(s) sustained grievous injuries. Stating so, they filed claim petitions claiming compensation. On consideration of the materials and evidence available on record, the Tribunal awarded compensation of Rs.10,800/-, Rs.10,300/- and Rs.15,800/- respectively, with interest at 9%pa from the date of claim petitions. Challenging the liability fastened on the appellant insurance company, the present appeals have been filed before this Court.

3.The learned counsel for the appellant submitted that the Tribunal has erred in holding that the appellant was liable to pay compensation, in a case where the claimants were travelling in the goods vehicle, when such persons are not entitled to travel in the vehicle nor required to be covered under the Motor Vehicles Act. He further submitted that the Tribunal ought to have exonerated the appellant on the ground that there was gross violation of policy conditions by carriage of 50 passengers in the goods vehicle.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Though these appeals were admitted way back in the year 2005, the appellant has not taken proper steps to serve papers on the other side. However, considering the passage of time, this Court is inclined to dispose of these appeals on merits.

6.The main point urged by the learned counsel for the appellant is that the terms and conditions of the insurance policy have not been complied with by the second respondent/owner of the vehicle. However, no evidence was adduced either in oral or documentary to substantiate the same. Further, there is no dispute that the first respondent(s)/ claimants had travelled in the tempo at the time of accident. In such circumstances, they were the competent witnesses to narrate about the manner of the accident, according to whom, due to rash and negligent act on the part the driver of the tempo, the vehicle capsized in a carter. Ex.P1 First Information Report was registered against the driver of the Tempo. Placing reliance on those materials and evidence, the Tribunal has considered the issue in proper perspective and came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tempo and accordingly, fastened the liability on the appellant insurance company, which this Court is not inclined to interfere.

7.Since the quantum of compensation awarded by the Tribunal is unassailable, the same is confirmed as such.

8.In such view of the matter, all the Civil Miscellaneous Appeals are dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest and costs, 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 first respondent(s)/ claimants are permitted to withdraw the same, on making proper application.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
(I Additional District Court), Dharmapuri.

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

+1cc to Mr.M.B.Gopalan, Advocate Sr.48183

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