

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1274 of 2010

National Insurance Co. Ltd.,
Erode.

.. Appellant / Respondent IV

Vs.

1.Chinnappan
2.Mohanasundaram
3.N.Somasundaram
4.National Insurance Company. Ltd.,
Gobichettipalayam Town & Taluk.

.. Respondents/Petitioner/

Respondents 1 to 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.08.2009 made in M.C.O.P.No.231 of 2006 on the file of the Motor Accident Claims Tribunal, Sub-Ordinate Judge of Bhavani at Erode District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.P.Thangavel For R1

Non-appearance for
R3 & R4

R2-not ready notice.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 19.08.2009 made in MCOP.No.231 of 2006 on the file of the Motor Accident Claims Tribunal, Sub-Ordinate Judge of Bhavani at Erode.

2.The appellant herein is National Insurance Company, who is the third respondent in M.C.O.P.No.231 of 2006. The first respondent herein filed the said claim petition, claiming a sum of Rs.2,50,000/- as compensation for the injuries that he had sustained during the accident that took place on 09.11.2005.

3.Brief facts which are necessary for disposal of this appeal are as follows:-

On 09.11.2005, when the injured viz., Chinnappan was travelling in 407 Tempo bearing Regn. No.TN. 59 9923 as a Goods owner in order to go to Sankari, at that time the first

respondent drove the said Tempo in such a rash, negligent and careless manner and turned the said Tempo on its left-hand side. Due to his negligent drive, the said Tempo upset. Due to the accident, the petitioner sustained multiple grievous injuries all over his body. The accident occurred only due to the rash and negligent driving of the third respondent. Thereafter, the injured was taken to the Sankiri Government Hospital, subsequently, on seeing the conditions of the injured, he was taken to Erode Government Hospital where he was admitted as inpatient. Due to the grievous injuries on his leg knees, the injured was not able to stand or walk for a long time. Hence, the appellant had filed a claim petition before the Tribunal, claiming a sum of Rs.2,50,000/- as compensation.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving of the second respondent, who had driven the third respondent's lorry bearing Registration No. TN 59 E 9923 and directed the appellant-Insurance Company, who is the third respondent therein, to pay a sum of Rs.55,000/- as compensation to the claimants separately or jointly along with interest at the rate of 7.5% per annum. Challenging the said award dated 19.08.2009 made in M.C.O.P.No.231 of 2006, the appellant- National Insurance Company has come out with the present appeal.

5.The learned counsel for the appellant submitted that the first respondent is an Agricultural Labour. One Mr.Babu, was examined as R.W.1 and marked Ex.R1-Insurance policy proving the violation of terms and conditions of policy and non payment of premium covering the risk of Load man ought to have exonerated the appellant from the liability. He further submitted that the Evidence of traveling of one Kamaraj, Chinnappan and Altaf in the Tempo driven by the driver Mohana Sundaram totally four persons exceeding the permitted capacity which fact was reflected in the F.I.R, Ex.A1 ought not to have fastened the liability against the insurance company. He further submitted that the Insurance Policy not covering the risk of load man, hastily fastened the liability against the insurance company.

6 .The learned counsel appearing for the first respondent/claimant contended that the Tribunal after considering the materials on record awarded reasonable compensation and prayed for dismissal of the appeal.

7.Heard the learned counsels appearing for the appellant as well as the 1st respondent and perused all the materials available on record.

8.Taking into consideration the facts and circumstances of

the case, this Court is of the view that the Tribunal ought to have exonerated the Insurance Company, on the ground that the Insurance Policy conditions do not cover the risk of load man, but, hastily fastened the liability, which alone needs interference. Therefore, only the owner of the Tempo is liable to pay compensation to the claimant for violating the policy conditions. Considering the fact that the claimant is an agriculturist, the appellant/Insurance Company is hereby directed to pay the compensation to the claimant and recover the same from the owner of the lorry in accordance with law.

9. In the result, the Civil Miscellaneous Appeal is allowed and the appellant-Insurance Company shall proceed against the owner of the lorry in accordance with law. The Judgement and Decree of the Tribunal remains unaltered in other respects. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tta

To

1. Subordinate Judge,
Motor Accident Claims Tribunal
Bhavani at Erode District.

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

+1 cc to M/s. Ma. P. Thangavel, Advocate Sr.No. 103759

+1 cc to M/s. J. Chandran, Advocate Sr.No. 104185

C.M.A.No.1274 of 2010

AK (CO)

RMP (18/11/2020)

WEB COPY