IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.942 of 2008

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.. Appellant/Claimant

Vs.

1. M.Thangavel
   (R1 set exparte before the Tribunal)

2. United India Insurance Company Limited,
   19/A Junction Main Road,
   5 Road, Salem -4.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2007 made in M.C.O.P.No.151 of 2004, on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mr.K.Kuppusamy
For R2 : Mr.J.Chandran
For R1 : No Appearance

J U D G M E N T

According to the appellant, on the fateful day, i.e., on 06.11.2003, at about 8.30pm, he was travelling in the mini auto bearing Registration No.TN28 S 9390 belonging to the first respondent and insured with the second respondent insurance company. At that time, due to rash and negligent driving of the driver of the mini auto, the vehicle got overturned at Thiruvandipatty. As a result of the same, the appellant sustained grievous injuries. Claiming a compensation of Rs.3,00,000/-, he filed a claim petition before the Tribunal, which, after considering the oral and documentary evidence available on record, held that the first respondent/owner of the vehicle has permitted the appellant to travel in the goods vehicle as gratuitous passenger and thereby violated the policy condition and accordingly, fastened the liability on the first respondent and exonerated the second respondent insurance company and ultimately awarded a total compensation of

Rs.99,790/- with interest at 7.5% per annum from the date of petition. Aggrieved over the same, the appellant/claimant has preferred this appeal.

2. The learned counsel for the appellant/claimant submitted that the Tribunal has erred in exonerating the second respondent insurance company to pay the compensation, as there was no violation of the policy conditions. The learned counsel further submitted that the compensation awarded by the Tribunal is inadequate and hence, the same has to be enhanced substantially.

3. The learned counsel for the second respondent Insurance Company submitted that the Tribunal, after considering the materials and evidence adduced by the parties, has rightly rendered its findings on negligence and liability and awarded the just compensation and hence, the same do not call for any interference by this Court.

4. Heard the learned counsel on either side and perused the materials available on record.

5. There is no dispute with regard to the factum of the accident and the manner in which the accident took place. Hence, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the mini auto, is hereby confirmed.

6. With regard to the liability, considering the materials and evidence available on record, the Tribunal has exonerated the second respondent insurance company and fastened the liability on the first respondent/owner of the vehicle, after holding that the first respondent has violated the policy conditions, as the appellant had travelled in the goods vehicle as unauthorised passenger at the time of accident.

7. Under MV Act 1939, the leading decision is reported in 1999 ACJ 1 (Mallawwa Vs. Oriental Insurance Co. Ltd) and it was held that the Insurer was not required to cover the risk to gratuitous occupants carried in a goods vehicle as well as those carried for hire or reward in such vehicles. Only such of those persons who were workmen under WC Act 1923 were required to be covered under Sec.95 of the Act.

8. However, in respect of MV Act, 1988 the leading judgment is reported in 2003 (1) ACJ 1 (SC) (New India Assurance Company Limited V. Asha Rani and others) wherein the legal position with regard to gratuitous occupants carried in a goods vehicle, in respect of accidents after 01.07.1989 before 14.11.1994 and after 14.11.1994 was clarified. It was held that before 14.11.1994 gratuitous occupants and those carried for hire or reward after 01.07.1989 were not required to be covered. In respect of accidents after 14.11.1994, it has been held that

owners of goods or representatives of owner of goods accompanying them the goods were held entitled for coverage. Those carried for hire or reward were neither covered under MV Act, 1939 nor under MV Act, 1988.

9. In the case reported in 2006 (1) MLJ 154 (Mad) [United India Insurance Co. Ltd., Vs. Selvam], following the decision of Supreme Court in 2004 (2) SCC 1 [Baljit Kaur's Case] it has been held that in respect of accidents prior to 06.01.2004, the insurance companies shall have to pay and recover. In respect of accidents after 06.01.2004 the Insurance Companies can avoid liability to such persons in toto.

10. Going further, during 2017, one step ahead, in the case of Manuara Khatun vs. Rajesh Kr. Singh, reported in AIR 2017 SC 1204, the Hon'ble Supreme Court has held that the deceased who was travelling in the goods vehicle can be termed as a gratuitous passenger and not covered under the insurance policy and, therefore, Insurance Company was exonerated, but directed to pay the amount of compensation to the claimants with the right to recover the same from the insured. Similar view has been taken in the case of Lal Singh Marabi v N.I. Com., reported in 2017 (5) SCC 82.

11. Added to the above, in a recent Division Bench decision of this Court reported in 2018 (2) TN MAC 731 (DB) (Bharathi AXA General Insurance Co. Ltd. v. Anandi and two others) among other things and after analyzing all the decisions on the issues of 'gratuitous passenger' and 'pay and recover', the Division Bench has observed as follows:-

> "52. In fine, all the Appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle., viz., the first respondent in all the Original Petitions and the Award against the Insurance Company will stand set-aside. However, in view of the fact that the claimants are not before us, we do not impose any costs. ....."

12. Suffice to point out that the said decisions squarely apply to the facts of the case on hand. In this case, it is the admitted case of both sides that the accident had taken place on 06.11.2003. Hence, it is crystal clear that the Insurance Company is liable to pay and recover the compensation amounts from the insured.

13. As regards the quantum of compensation, the appellant/ claimant himself examined as P.W.1, who deposed that he was 55 years old and was earning Rs.3,000/- per month; in the accident,

he sustained fracture in his right leg, due to which, the right leg was shortened by 5 cm and his right leg knee was reduced and he has been continuously taking treatment. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 40% permanent disability; Ex.P3 is the disability certificate; and Ex.P4 is the X-ray. After analysing the oral and documentary evidence adduced by the appellant/claimant, the Tribunal has fixed his monthly income at Rs.2,000/- and arrived at the annual income at Rs.24,000/- and ultimated awarded the compensation under the head "loss of income due to disability" at Rs.92,400/- by adopting the multiplier of 11 and taking the permanent disability at 35%. The Tribunal has correctly analyzed the income of the injured, adopted the correct multiplier and arrived at the compensation for the disability suffered by the injured and hence, the same does not call for any interference by this Court. That apart, the Tribunal has awarded Rs.250/- towards transportation, Rs.1,000/- towards extra nourishment, Rs.140/- towards medical expenses as per Ex.P5, Rs.6000/- towards pain and suffering, which, in the considered opinion of this Court, appear to be fair, just and reasonable, as the same have been quantified, based on the materials and evidence available on record and hence, the same need not be interfered.

14. In such view of the matter, this appeal is partly allowed. The award of the Tribunal in respect of the liability, is modified to the effect that the second respondent-Insurance Company shall initially deposit the award amount of Rs.99,790/- with interest at 7.5%pa from the date of filing of the petition and costs, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
I Additional District Judge, Salem.

C.M.A.No.942 of 2008

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A.SK(10/03/2020)