IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2653 of 2009
and
M.P.No.1 of 2009

The National Insurance Co, Ltd.,
Branch Office,17-3-654/B,
Opp: to R.T.C. Bus Stand,
Andhra District- 515 201.
Andhra Pradesh State. ...Appellant/R2

Vs

1.Jagannathan ...R1/claimant
2.Akram Basha ...R2/R1

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree passed in M.C.O.P.No.322 of 2005 on 28.06.2007 on the file of the learned Motor Accident Claims Tribunal (1st Additional District Judge) Krishnagiri at Dharmapuri District.

For Appellant : Mr.J. Chandran

For Respondent -1 : M/s.P. Malliga

JUDGMENT

This appeal is preferred by the Appellant/Insurance Company against the Judgment and decree passed in M.C.O.P.No.322 of 2005 dated 28.06.2007 on the file of the learned Motor Accident Claims Tribunal, I Additional District Judge, Krishnagiri at Dharmapuri District.

2.The case in brief, is as follows:

On the fateful day, ie.on 15.09.2004 when the first respondent herein was travelling in a goods carriage vehicle, ie., Tempo bearing Registration No:CTX-9308 MGV from Sarjapuram to Bagalur road at about 20:30 hours, the vehicle got capsized due to the rash and negligent driving of its driver. Due to the said impact, the first respondent sustained multiple and grievous injuries. He was admitted in the Government Hospital, Hosur for treatment. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded the compensation of Rs.49,800/- with interest at the rate of 7.5% p.a., from the date of petition. Further, the Tribunal, accepting the contention of the Insurance Company that the claimant had travelled as unauthorised passenger, ordered for pay and recovery.

3.Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant/Insurance company has contended that there is no specific negligence against the driver of the tempo and the evidence of P.W.1 is not acceptable. Learned counsel would further contend that the terms and conditions of the policy have been violated by carrying more number of passengers than the prescribed limit in a goods carriage vehicle and the driver of the vehicle was not possessing the valid driving licence to drive the goods vehicle at the time of accident. To substantiate the above contention, the learned counsel for the appellant relied upon the decision reported in the case of The New India Assurance Co.Ltd., Vs Asharani and others, [(2003) 2 SCC 223] wherein it is stated that carrying of passengers in a goods carriage is not contemplated under the Act and hence the insurer is not liable for accidental death or injured travelling in a goods vehicle.

5.The learned counsel for the claimant/first respondent has submitted that the Tribunal has properly considered the evidence and materials available on record and has arrived at the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.The injured/first respondent herein was examined as P.W.1 who has deposed that at the time of the accident he was loading the purchased vegetables in the tempo and he was travelling along with the vegetables in the vehicle. But, regarding this aspect he has not produced any documentary proof before the Tribunal. P.W.5/ Doctor, in his evidence has examined the injured and assessed the disability at 15% and issued Ex.P.7 disability Certificate. But, during cross examination, he stated that he had not treated the injured.

8. The Tribunal has relied upon the judgments reported in 2007 (1) M.L.J, 65 [Oriental Insurance Co.Ltd., Chennai Vs. Dhanabackiam and others] and 2006 A.C.J.370, [New India

Assurance Co.Ltd vs Chandra and others] wherein, quoting Section 147(1) of the Motor Vehicles Act, in respect of the liability of the Insurance Company to pay compensation to unauthorised passengers, it has been held that the Insurance Company shall make payment of the award amount and recover the same from the owner of the vehicle, in order to facilitate payment to the claimants. The Tribunal has correctly analysed the materials, evidence and the case laws and has ordered for pay and recovery and hence this Court is not inclined to interfere with the same.

9.With regard to the quantum of compensation, since no documents have been produced to substantiate the claim of the claimant that he was earning a sum of Rs.5,000/- as vegetable vendor, the Tribunal has fixed the monthly income of the injured at Rs.2,000/- and calculated the annual income at Rs.24,000/-. Since the injured was aged 35, multiplier of '17' was applied and the loss of earnings, was quantified at Rs.4,08,000/- (Rs.24,000/-x17) and 10% of the said amount has been awarded under the head 'Loss of Mobility'. Considering other relevant materials, the Tribunal has awarded Rs.2,000/- towards partial loss of income, Rs.1,000/- towards Transportation expenses, Rs.1,000/- towards extra-nourishment and Rs.5,000/- towards pain and suffering. The findings rendered on quantum by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. The Tribunal has also meticutiosly considered each and every aspect into consideration and arrived at the just compensation, which cannot be brushed aside easily by this Court without any new facts or evidence and hence the compensation awarded by the Tribunal is confirmed.

10.In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount, as ordered by the Tribunal, along 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 being made, the first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amount, in accordance with law. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1 .The Motor Accidents Claims Tribunal
I Additional District Judge,
Krishnagiri at Dharmapuri District.

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

C.M.A.No.2653 of 2009
and
M.P.No.1 of 2009

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