IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.398 of 2009
and
M.P.No.1 of 2009

M/s. The Oriental Insurance Company Ltd
I Floor
Lakshmi Towers
Near Thara Hospital
R.V.Road, Bangalore
Karnataka   Appellant / 2nd Respondent

Vs

1.Ambedkar

2.C.Singaravelu   Respondents /Petitioner
1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 3-3-2008 made in MCOP No.430 of 2005 on the file of the Motor Accidents Claims Tribunal/Additional District Court, Dharmapuri.

For Appellant : Mr.M.Rajasekar

For R2 : No appearance (Exparte in Lower Court)

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award passed by the Tribunal in MCOP No.430 of 2005.

2.The case in brief, is as follows:

On 16.05.2004, at about 6.00pm, when the claimant along with others, after completion of their musical performance at Perumbalai, were returning to Pennagaram, in a Tempo Van bearing Reg.No.MEH 5580, and at that time, the driver of the Van drove the vehicle in a rash and negligent manner, as a result of which, the van got capsized. Due to the said accident, the claimant and others who were travelled in a van sustained severe injuries. Hence, the claimant has filed a claim petition before the Tribunal claiming a compensation of Rs.5,00,000/-. After elaborate trial, the Tribunal has awarded a total compensation of Rs.10,000/- with interest at the rate of 7.5% per annum from the date of petition.

3. Challenging the award passed by the Tribunal, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4. Despite service of notice and the name of the second respondent having been printed in the cause list, there is no representation on his behalf. However, due to the paucity of time, the appeal is taken up for consideration on merits.

5. Heard the learned counsel for the appellant.

6. The learned counsel for the appellant submitted that the Tribunal erred in holding that the driver of the insured van bearing Reg.No MEH 5580 was responsible for the accident. The learned counsel further submitted that the claimant along with others were travelled in the said van as unauthorised passengers. It is further submitted that the appellant is not liable to indemnify the second respondent as he has contravened the statutory provisions and terms of policy.

7. On a perusal of the award passed by the Tribunal, it is pertinent to note that before the Tribunal, the claimant and one Mariappan, (who travelled along with the claimant in the said van, at the time of accident) have been examined as PW 1 and PW 2 respectively. Further, it is to be noted that the evidence of PW 1 and PW 2 corroborate with the contents of Ex.P.1 First Information Report. The driver of the van, who is competent to speak about the manner of accident has not been examined before the Tribunal as one of the witnesses, which is also one of the fatal to the case of the appellant herein. Thus, the conclusion arrived at by the Tribunal that due to the rash and negligent driving of the driver of the Van only, the accident had happened has to be sustained. Hence, the findings arrived at by the Tribunal regarding the negligence aspect needs no interference by this Court.

8. With regard to the violation of policy is concerned, before the Tribunal one Kandasamy, Senior Assistant of Insurance Company has been examined as RW.1 and he deposed that the said vehicle is a goods vehicle and including driver, it has a capacity of seating only two. But, in this case on hand, 8 persons were travelled along with their musical instruments, by violating the policy conditions. Hence, the Insurance Company / appellant herein is not liable to pay the compensation. It is pertinent to note from the evidence of PW 1/claimant that he had travelled in the said vehicle along

with driver in the front cabin only. Moreover, the Tribunal has found that nothing has been elicited by the appellant to prove that the injured is an un-authorized passenger. Based on these findings, the Tribunal has concluded that the appellant herein is liable to compensate the claimant, which in the view of this Court is sustainable.

9. As far as the quantum of compensation is concerned, the Tribunal has taken note of Ex.P.2 Accident Register, wherein it was mentioned that the claimant has suffered only simple injuries. Further, no medical records have been submitted in order to substantiate that the claimant took further treatment for his injuries. In the absence of medical proof and relevancy thereof, the Tribunal has fixed Rs.1,000/- towards Transport expenses, Rs.1,000/- towards extra nourishment, Rs.3,000/- towards medical expenses, Rs.5,000/- towards pain and sufferings, totalling to Rs.10,000/-. This Court is of the opinion that the compensation awarded under each and every heads by the Tribunal is reasonable, and therefore, there is no ground to interfere with the judgment passed by the Tribunal.

10. In such view of the matter, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company is directed to deposit the award amount along with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount, to the Savings Bank Account of the claimant/ 1st Respondent herein, through RTGS, within one week thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrn

To

1.The Motor Accident Claims Tribunal/
Additional District Court,
Dharmapuri.

2.The Section Officer
V.R.Section
Madras High Court
Chennai 104.

+1cc to Mr.M.Raja Sekar, Advocate SR.63125

RK(CO)
CB(03/03/2020)