IN THE HIGH COURT OF JUDICATURE AT MADRAS
Judgment Reserved on : 29.03.2019
Judgment Delivered on : 25.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.80 of 2009

K.Palanisamy
...Appellant

Vs.

1.Rangasamy
2.Jaya
3.The New India Assurance Co.Ltd.,
New Hospital street,
Gobi Branch,
Gobichettipalayam,
Erode District.
4.Mani
5.P.R.Prema
6.The New India Assurance Co.Ltd.,
Hunsur, Mysore,
Karnataka State.
... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 19.06.2008, in M.C.O.P.No.192 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District Court/Fast Track Court No.II), Gobichettipalayam.

For Appellant	:	Mr.N.Manokaran
For R1,R4&R5	:	No appearance
For R2	:	Not ready in notice
For R3&R6	:	Mr.J.Chandran

JUDGMENT

The claimant is the appellant herein. Challenging the award passed by the Tribunal in M.C.O.P.No.192 of 2007 wherein, the Insurance Company was exonerated from liability and also on quantum.

2. The claimant/appellant filed in M.C.O.P.No.192 of 2007, seeking compensation for the accidental injuries sustained by him on 29.08.2004.

3. The claimant has filed the above claim petition alleging that:-

(i) On 29.08.2004 at about 7.30 p.m on the main road Sathigopi with the Registration No.TN 36A 7900 owned by the second respondent from West to East, as the 1st respondent was sitting in the driveway near the Shanti Theater from West to East, in the opposite case, a Lorry driver bearing Registration No.KA 09 B 5877 driven by a fourth respondent was injured in a collision with a traveling car.

(ii) The crash was caused by 1st respondent and 4th respondent careless and speeding vehicles. The claimant is a Junior Engineer in Agriculture. After the accident, the spine is broken and the eyelid is broken. The first and fourth respondent was negligent and caused the accident.

(iii) As the owner of the vehicles, the second and fifth respondents are insured and third and sixth respondents are jointly and severally liable to pay the compensation to the claimant Therefore, the claim petition was filed seeking compensation of Rs.3,52,000/- by the third and sixth respondents.

4. On behalf of the respondents 3&6/Insurance Company for both the vehicles being the same, a common counter statement has been filed before the Tribunal stating that as the first respondent-Driver of the vehicle was convicted by the Criminal Court and as the claimant has travelled as a gratuitous passenger, there is no policy coverage. Consequently, the Insurance Company is not liable to pay the compensation.

5. Furthermore, the specific plea was raised in the counter statement that the claimant has travelled in the car having Registration No.TN 36 A 7900 as a gratuitous passenger/un-authorised passenger at the time of the accident.

6. On consideration of both oral and documentary adduced before the Tribunal which has held that the accident has taken place due to the rash and negligence on the part of the driver of the first respondent's vehicle and not on the part of the fourth respondent and the claimant/injury travelled in the car as an un-authorised passenger and therefore, the third respondent-Insurance Company, Insurance Company for the first respondent's vehicle cannot be mulcted with liability and accordingly, exonerated the third respondent-Insurance Company of the car in which, the claimant had travelled.

7. Aggrieved against the said finding of the Tribunal, the appellant/claimant has preferred this appeal.

8. Before the Tribunal, P.W.1 was examined and P.W.2-Doctor was examined and Exhibits P1 to P16 were marked. On behalf of the respondents, R.W.1 was examined and Exhibit. R1-copy of Insurance Policy of the car (Registration No.TN 36 A 7900) and R2-copy of Insurance Policy of the lorry (Registration No.KA 09 B 5877) were marked.

9. Heard both sides and perused the records.

10. It is seen from the lower Court records that based upon Ex.P4-Judgment rendered by the Magistrate Court wherein, the driver of the first respondent car has pleaded guilty and paid fine and also taking note of the oral evidence available on record has held that the accident has taken place due to the rash and negligence on the part of the driver of the car and not on the part of the lorry driven by the fourth respondent belongs to the fifth respondent insured with the sixth respondent.

11. The core issue that is raised in the appeal is that the exoneration of the Insurance Company from any liability.

12. With regard to the above findings as to the manner of the accident and rash and negligence on the part of the driver of the fourth respondent's vehicle, the Tribunal has exonerated the 4th, 5th and 6th respondents and the same is hereby confirmed.

13. On the point of exoneration of the third respondent-Insurance Company of the second respondent's vehicle as per Ex.R1-Copy of the Insurance Policy (TN 36 A 7900) in which, the claimant had travelled on that date.

14. The nature of the policy is found to be liability only and the amount premium paid for the said vehicle as per the above said policy as extracted below:-

	B:T.P-BASIC	700.00
	Compulsory PA to Owner Cum Driver Amount 200000	100.00
	WC to Driver	25.00
	GROSS(B)	825
	Gross OD & TP	825
	Loading on TP Premium	83.00
	Stamp Duty	1.00
GROSS (A): Minimum Premium:Rs.100	Net Premium	908
	Service Tax 8%	73
	Net Amount Payable (Rounded)	981

15. On perusal of the above said extract, it is found that no additional premium has been paid by the second respondent in respect of any passenger travelling in the car as per the policy. It is only a insurance policy in respect of own damage and third party only.

16. Admittedly, the claimant/appellant travelled as an un-authorized passenger in the vehicle for whom, no additional premium has been paid by the second respondent-owner of the vehicle and hence, this Court finds that there is no valid policy coverage covering passenger in the private car and hence, the Insurance Company cannot be mulcted with the liability in respect of any injuries sustained by the person who travelled as a passenger in the car.

17. A similar finding rendered by the Tribunal on the point of liability of the Insurance Company is well considered and well merited does not warrant any interference in the appellate stage and accordingly, the same is hereby confirmed.

18. On the point of quantum, after going through the various heads of compensation and the amount awarded therein, I do not find any error or any infirmity and accordingly, the award passed by the Tribunal appears to be just and fair and

this Civil Miscellaneous Appeal is devoid of merits.

19. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The order passed by the Tribunal is upheld.

(iii) The first and second respondents are directed to deposit the entire amount awarded by the Tribunal together with costs and interest at the rate of 7.5% per annum and if not entirely deposited, the same be deposited after deducting the amount already deposited and the amount be deposited to the credit of M.C.O.P.No.192 of 2007 on the file of the Motor Accidents Claims Tribunal, (Additional District Court/Fast Track Court No.II), Gobichettipalayam within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The claimant is permitted to withdraw the above amount, in the manner known to law.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Additional District Court/Fast Track Court No.II),
Gobichettipalayam

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.N.Manokaran Advocate sr63986

Judgment in
C.M.A.No.80 of 2009

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