IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1615 of 2011 and
M.P.No.1 of 2011

M/s. ICICI Lombard General
Insurance Co. Ltd.,
Rep. by its Branch Manager,
Chhottabai Centre,
No.140, Nungambakkam High road,
Nungambakkam, Chennai. ... Appellant / 2nd Respondent

Vs.

1.Nazurullah ...1st Respondent/Petitioner

2.Sivalingam ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.07.2010, in M.C.O.P.No. 2 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Krishnagiri.

For Appellant : Mrs.R.Sreevidhya

For Respondents : R1 - no such person (Tapal returned)
R2 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the ICICI Lombard General Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 2 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Krishnagiri. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

On 27.10.2006, the petitioner, one Varadharaj and one Arumugham engaged a Tata Ace bearing Registration No. TN 24 A

9681 belonging to the second respondent herein, for transporting the brinjal from their village to Vellore market. The driver of the said vehicle drove the vehicle rashly and negligently and at about 21.00 hours, when the vehicle was proceeding near Marapattu village, suddenly, the right wheel tyre got burst and due to the accident, the vehicle capsized and the first respondent/claimant sustained injuries. According to the first respondent/claimant, the rash and negligent driving of the driver of the said vehicle was the cause of the accident, and that, since, the said vehicle was insured with the present appellant, both the owner of the said vehicle and the present appellant, are jointly and severally liable to pay compensation of Rs.50,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.10,000/- together with interest at the rate of 6% per annum to the first respondent/claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the ICICI Lombard General Insurance Company have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the appellant would contend that the first respondent/claimant claims to have travelled in the said vehicle as the owner of the goods. The driving licence of the driver of the said vehicle does not own any endorsement to drive the goods vehicle, though, the vehicle involved is a 'Light Motor Vehicle'. In this regard, they have adduced RW1 and produced B1.

5. Ex.B1 is the driving licence of the driver of the second respondent herein. The Tribunal after perusing Ex.B1, observed that the driver is eligible to drive the 'Light Motor Vehicle' and necessary endorsement has been made by the Assistant Licensing Authority, Krishnagiri. The Tribunal based upon the evidence has held that the claimant before the Tribunal is the owner of the goods and he travelled in the said vehicle to carry brinjal and accordingly, rejected the plea of the Insurance Company that the claimant is a unauthorized passenger. It is evident that only based on the evidence available, such a finding has been arrived and the same does not warrant any interference. By relying upon the decision in 2010 ACJ 725, the Tribunal has held that since the driver of the said vehicle is a LMV holder, he is entitled to drive the LMV goods vehicle and the vehicle in question is also a LMV goods vehicle and hence for want of badge is not necessary.

6. After going into the decisions and also the factual position as advanced before, the finding rendered by the Tribunal that the first respondent/claimant travelled in the

said vehicle as the owner of the goods to carry brinjal and the classification of the goods vehicle in the category of the LMV goods vehicle is correct. This court finds that the liability fastened on the Insurance Company is just and proper and the same does not warrant any interference. The total award amount of Rs.10,000/- is also not excessive. In this view of the matter, the Civil Miscellaneous Appeal is devoid of merits. Accordingly it is liable to be dismissed.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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

(iii) The present appellant - ICICI Lombard General Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.10,000/- (if not already deposited) together with interest at the rate of 6% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 2 of 2008, dated 27.07.2010, on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Krishnagiri within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

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Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Krishnagiri.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mrs.R.Sreevidhya, Advocate, S.R.No.14776

C.M.A.No.1615 of 2011 and
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BS(CO)
SSM(07/05/2019).