

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.1511 of 2013
and MP.No.1 of 2013

The United India Insurance Co., Ltd.,
MTPC Office,
No.38, Anna Salai, Chennai-2. ...Appellant/2nd Respondent

Vs.

1. Minor Kumaran
rep. by his father Govindaraj S/o.Muniyan
...1st Respondent/Petitioner

2.R.Lalitha W/o.Ravi ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.183 of 2007 on the file of the MACT (Subordinate Judge) Ponneri dated 23.12.2011.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : R1 - Notice Served
No appearance.
R2 - Notice not ready.

J U D G M E N T

The appellant/United India Insurance Co Ltd., is the second respondent in the MCOP.No.183 of 2007 dated 23.12.2011 on the file of the MACT, Subordinate Judge, Ponneri challenged the judgment and decree by raising the following grounds :-

The learned counsel for the appellant submitted that the tribunal ought to have exonerated the insurer as the insured had committed the violation of policy and permit conditions and carried more than 40 persons in the insured mini bus, whereas the permitted capacity was 25persons. The FIR also proved that 40persons travelled in the mini bus and liability cannot be fastened on the insurer.

2. The case of the claimant/1st respondent is that on 16.06.2006 at about 16.00hrs, the claimant was travelling in a mini bus bearing Reg.No.TN59-N-0580 from Arani to Thriunelai near to Komettipettiai driven by its driver in a rash and negligent manner and lost his control over the bus and caused the vehicle to upside down, thereby the claimant sustained grievous injuries all over the body. The other children travelled in the mini bus also sustained injuries. The 2nd respondent herein is the owner of the vehicle and the appellant herein is the insurer are liable to pay the compensation and the claimant claimed a total compensation of Rs.11lakh.

3. The owner of the vehicle/1st respondent remained exparte before the Tribunal and also remained exparte before this Court.

4. The 2nd respondent therein filed counter stating that the driver of the vehicle belonging to the first respondent, driven the vehicle at great speed in a rash and negligent manner, thereby endangering the public in general. The insurance company also seeks to produce all the other records of the vehicle before the Tribunal.

5. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 to P5. The second respondent examined one Srinivasan as RW1 and no documents have been marked on its behalf.

6. From the FIR it is proved that due to rash and negligent driving of the driver, the said accident has been caused. Pursuant to the same a case has been registered against the driver of the said mini bus and no contrary evidence has been produced to dispute the same as against the driver of the mini bus. The driver of the mini bus has not been examined to say anything about the accident. In the absence of any such evidence, the owner of the vehicle who is vicariously liable to pay the compensation to the claimant for driving the vehicle in a rash and negligent manner causing accident. The appellant herein contended that the claimant has to prove the accident. Once the claimant had furnished the policy details in the claim petition, it is for the insurance company to produce the original copy of the policy to establish its contentions thereby disproving the claimant's contention. The insurance company had contended that the seating capacity of the mini bus is only 25passengers, whereas at the time of accident more than 50passengers were travelling in the said mini bus, which is in total violation of terms and conditions of the insurance policy. Hence, it is found that the insurance company is not liable to pay the compensation. The motor vehicle inspector report/Ex.P3

also reported that the vehicle was in good condition, the accident had occurred only due to rash and negligent driving of the vehicle and not due to any mechanical default.

7. The Court below had erroneously concluded that the insurer is liable to pay the compensation. The learned counsel for the appellant submitted the policy condition has been violated by the owner of the vehicle, the 2nd respondent/owner ought to have been held liable for carrying more than capacity of 25 persons. Thus, in view of the specific finding rendered by the Tribunal regarding the manner of the accident and the negligence on the part of the driver, the finding of the Tribunal fastening the liability on the insurer of the mini bus is baseless and unfounded. Hence, the insurer company is directed pay the amount and recover it from the vehicle owner.

8. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the heads of transportation, extra nourishment and pain and sufferings is as follows :-

Sl.No.	Heads	Amount
1	Transportation	2,000
2	Extra nourishment	2,000
3	Medical expenses	2,000
4	Pain and sufferings	9,000
5	Permanent disability	20,000
	Total	35,000

9. The compensation of Rs.32,000/- is enhanced to Rs.35,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of balance amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the injured is permitted to withdraw the entire amount by filing separate cheque application. The insurance company/appellant is at liberty to pay the compensation to the claimant and recover the same from the owner of the vehicle/2nd respondent by initiating appropriate proceedings as there is violation of policy condition.

10. In the result, the Civil Miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

tsh

To

The Subordinate Judge, Ponneri.

Copy to

1.The Section Officer,
V.R.Section, High Court, Madras -104

2.Minor Kumaran rep by his father
Govindaraj S/o Muniyan ,
Amithanallur Village.
Chinnambedu Post,
Uthkottai Taluk,
Tiruvallur District.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.101723

C.M.A.No.1511 of 2013

KRD(CO)
KKV/10/12/2020

सत्यमेव जयते

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