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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2019

Pronounced on : 28.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2052 of 2011 and Cross.Obj.No.55 of 2016
and
MP.No.1 of 2011

C.M.A.No.2052 of 2011:

Divisional Manager,
Bajaj Allianz General Insurance Co, Ltd.,
No.25/26, Prince Towers,
Nungambakkam,
Chennai
... Appellant/1st respondent /2nd respondent

Versus

1.Govindaraj .. Respondent/Cross objector/ Petitioner

2.Selvaraj ...2nd Respondent/2nd Respondent/1st respondent

Cross.Obj.No.55 of 2016:

Govindaraj ... Cross Objector/1st Respondent/
Petitioner

Versus

1.The Divisional Manager,
Bajaj Allianz General Insurance Co, Ltd.,
No.25/26, Prince Towers,
Nungambakkam,
Chennai. ..1st Respondent/ Appellant/2nd respondent

2.Selvaraj .. Respondent/2nd respondent/1st Respondent

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.11.2010 made in M.C.O.P.No.27 of 2009 on the file of the Motor Accidents Claims Tribunal,Principal Sub-Court, Thiruvannamalai.

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Mr.S.Arunkumar : For Appellant in CMA.No.2052/2011 &
: first Respondent in Cross.Obj.No.55/2016

Mr.S.Murugan: For R1 in CMA.No.2052/2011 &
for Appellant in Cross.Obj.No.55/2016
: Notice Dispense with
(for R2 in both cases)
[vide Court order dt.18.07.2018]

JUDGMENT

The Insurance company is the appellant herein. Challenging the award and decree dated 29.11.2010 made in M.C.O.P.No.27 of 2009 on the file of the Motor Accidents Claims Tribunal,Principal Sub-Court, Thiruvannamalai, the present appeal has been filed.

2.As against the very same judgment, seeking enhancement of the compensation awarded by the Tribunal, the claimant has filed the Cross Objection.

3.The first respondent/claimant, who suffered injuries in a road accident, has filed a claim petition alleging that on 19.08.2008 at about 12.30 noon, when he tried to board the van bearing registration No.TN-25-B-6095 for the purpose of loading, the driver of the Van without noticing the claimant entering into the Van, moved the van suddenly, in a rash and negligent manner and caused the accident. In the said accident the claimant fell down and sustained grievous injuries all over the body and sustained fracture of his both ankles. In connection with the said accident, a criminal case in Crime No.177 of 2008 under Section 279 and 338 IPC has been filed against the driver of the van. At the time of the accident, the claimant was aged 35 years and earning a sum of Rs.5,000/- per month. For the injuries sustained by him in the said accident, the claimant filed the claim petition before the Tribunal claiming a sum of Rs.5,00,000/, which was restricted to Rs.3,00,000/-, as compensation.

4.The case of the claimant was resisted by the Insurance Company by taking a defence that the Van is meant only to carry goods; but the claimant/first respondent was travelling as unauthorized passenger in the said vehicle and he is not an employee under the second respondent's concern. Hence, the owner of the vehicle committed breach of contract under the Insurance Policy and as such, there is a violation of the conditions of the policy. Hence, the Insurance Company is not liable to pay the compensation amount.

5.Before the Tribunal, in order to substantiate his case, the injured examined himself as PW1 and reiterated the manner of accident, besides examining one Doctor K.Raveendran as PW2, who assessed the disability as 50% and 7 documents have been marked as Exs.P1 to Ex.P7. On the side of the

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respondents one Mahesh, legal officer of the Insurance company, was examined as RW.1 and 2 documents namely Ex.R1/Investigation report & R2/Rules and regulation copy of the policy have been marked.

6.After analyzing the entire evidence, Tribunal held that the injured as a loadman and considering the factum of Policy coverage, it has further held that both the owner as well as the insurance company are jointly and severally liable to pay the compensation to the claimant. Aggrieved against the fixing of liability on the part of the insurance company, they have preferred the present appeal.

7.The learned counsel appearing for the insurance company would contend that the injured travelled as unauthorized passenger and that when the claimant was called upon by the owner of the van, he tried to board the van from the back side, which was not noticed by the driver of the van, the claimant fell down from the van and sustained fracture injuries of both ankles. Further, in the absence of any evidence to show that the claimant is not an unauthorized passenger in the said van, the Tribunal ought not to have fastened the liability on the Insurance Company to pay the compensation.

8.Per contra, the learned counsel appearing for the first respondent/claimant would contend that it is specifically pleaded by the claimant/injured that he travelled as loadman in the van. In the absence of any positive evidence in the Policy issued by the Insurance company, the claimant/injured cannot be denied the compensation. Thus, the learned counsel for the 1st respondent/claimant prayed for dismissal of this appeal.

9.After hearing both sides and perusing the oral and documentary evidence adduced before the Tribunal and taking into consideration of the deposition of PW.1 as injured, Ex.P1/FIR filed against the driver, Ex.P2/Accident Register certificate issued to the injured, Ex.P3/Motor Inspector's Report, Ex.P4/Charge sheet laid by the Police, Ex.P5/a copy of the judgment pronounced by the Chief Magistrate No.I, Ex.P6/permanent disability certificate and Ex.P7/Xray, wherein, it appears that the driver of the van pleaded that without noticing the claimant boarded into the van, he moved the van, due to which he also paid fine before the lower Court. Considering this facts the Tribunal passed the order and directed the first respondent and the second respondent liable to pay the compensation.

10.On perusing all the details and records as well as records Ex.P1 and P6, it shows that the claimant/injured has travelled as loadman assumes significance. My attention is drawn to the evidence of RW.1, the staff from the insurance company, who issued Ex.R1/ Investigation report filed by the insurance surveyor, stating that the claimant has not travelled as a loadman. However, for the reasons best known,

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the surveyor/Inspector appointed as Investigator on behalf of the insurance company was not examined before the Tribunal. Admittedly, it is seen from Ex.R2, that at the time of accident, the vehicle possessed a valid and existing policy coverage. Though the appellant counsel appearing for the insurance company would contend that the injured is not a loadman, it is seen that to substantiate the said fact, they relied upon the version of RW.1.

11.Admittedly, RW1 has not conducted the investigation and placed upon the report on the basis of hearsay witness. Furthermore, my attention is drawn towards annexure in the Ex.R1/investigation report, wherein, the Signature of the driver and the owner are found, wherein there is statement recorded to show that the injured has not travelled as loadman and however to substantiate the same no other document was filed nor any person connected with the document were examined before the Tribunal to enlight the above factual position, as to show whether the injured is loadman of the van or not, also assumes significance.

12.It appears that the Tribunal on consideration of both the oral and documentary evidence and taking note of the fact of Ex.R1, the policy was in force and driver of the van is having valid and effective license to drive the vehicle and permit at the relevant point of time and as per Ex.R2, the policy coverage is extended to driver, owner and two other persons for coverage.

13.During the cross examination of RW.1, it is elucidated that the insurance company had issued notice to the van driver and the owner and the same is returned unserved. However, the cover which returned unserved has been filed before this Court. For the reasons best known, the driver was not examined by the Insurance company. As such, the owner of the vehicle has not been examined to substantiate the said claim of RW.1 nor steps were taken to prove the alleged recorded statement of the driver and the owner before the Tribunal, which assumes greater significance and hence, the Tribunal has rightly come to the conclusion that the plea of insurance company before the Tribunal that the injured has travelled as unauthorized passenger and the said pleading was not proved in the manner known to law. On re-appreciation of evidence of RW.1 and also taking note of the answer elicited from cross examination of RW1, coupled with the terms and conditions of Ex.R2/ policy, and non-examination the driver or owner or investigator, who is said to have prepared the Ex.R1 has negatived the plea and in the absence of any positive evidence to that effect, the said finding of Tribunal does not call for any interference at the appellate stage.

14.On the above said factual background, this Court is of the considered view that the Tribunal has rightly come to the conclusion that none of the persons, who are said to have given the statement have been examined in the trial to

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substantiate the said plea, carefully. The Tribunal has held that the insurance company has failed to discharge the onus of proof to show that the injured has not travelled as a loadman is not substantiated with any positive evidence and hence, the said finding that he travelled only as loadman is well founded and it does not require any interference. Hence, the finding of the Tribunal that the injured is not an unauthorized passenger but only a loadman, is hereby confirmed.

15.Consequently, in view of the terms and conditions of the policy coverage, the Tribunal has decided that both the owner of the van and the insurance company are jointly and severally liable to pay the compensation to the victim/claimant. Thus, on the point of quantum raised by the insurance company as extracted supra stands negatived or analyzing the records and evidence of PW.2/Doctor and P6/permanent disability certificate, the injuries sustained by the claimant is fixed at 45% and awarded a sum of Rs.90,000/- is proper compensation and the same is hereby confirmed and compensation awarded on other heads are also found to be reasonable and in short the quantum of compensation awarded by the Tribunal is just and reasonable. Thus, this Court does not want to interfere with the same.

16.In view of the above said findings of the Tribunal, as the injured has travelled as loadman, both the owner of the vehicle and the insurer of the vehicle are jointly and severally liable to pay compensation to the claimant as ordered by the Tribunal, which is just and proper and the same is hereby confirmed.

17.In the result, the Civil Miscellaneous Appeal filed by the appellant is dismissed and the Cross Objection filed by the claimant is also dismissed by confirming the Judgment and Decree 29.11.2010 made in M.C.O.P.No.27 of 2009 on the file of the Motor Accidents Claims Tribunal,Principal Sub-Court, Thiruvannamalai. The Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest at the rate of 7.5% per annum, after adjusting the amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Principal Sub-Court, Thiruvannamalai.

Copy to:
The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.S.Arunkumar , Advocate SR.No. 30609
+1cc to Mr.S.Murugan , Advocate SR.No. 30402

C.M.A.No.2052 of 2011
and
Cross.Obj.No.55 of 2016
and
MP.No.1 of 2011

A.SK(24/09/2019)

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