

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.04.2019

Judgment Delivered on : 07.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1954 of 2012 and CMA.No.901 of 2013

&

MP.No.1 of 2012 and MP.No.1 of 2013

C.M.A.No.1954 of 2012:

The Branch Manager,
M/s.New India Assurance Co.Ltd.,
Branch Office, No.39-C, Bye Pass Road,
Dharmapuri. ... Appellant/Respondent 2

Versus

1.Thimmaraju
2.Kumar ... Respondents/Petitioner & Respondent

C.M.A.No.901 of 2013:

The Branch Manager,
M/s.New India Assurance Co.Ltd.,
Branch Office, No.39-C, Bye Pass Road,
Dharmapuri. ... Appellant/Respondent 2

Versus

1.Maruthupandiyan
2.Kumar ... Respondents/Petitioner & R1

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2011 made in M.C.O.P.Nos.1018 & 1019 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Dharmapuri.

For Appellant : Mr.J.Chandran

For Respondents: Mr.R.Selvakumar (for R1)

: Not Ready in notice - R2

COMMON JUDGMENT

Both Civil Miscellaneous Appeal have been filed by the appellant/Insurance company aggrieved against the common award dated 30.11.2011 made in M.C.O.P.Nos.1018 & 1019 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Dharmapuri.

2.The brief facts, which are necessary to decide the appeal, and the relevant particulars, are as follows:-

On 12.06.2009, at about 8.00 am, the claimants were working under the first respondent for loading and unloading purpose and travelling in the Tractor bearing Registration No.TN-49-H-4316, from Bandala boyar kottai to Marandahalli to deliver the mud and debris. While the vehicle was nearing to Chettypatty colony, the Tractor took a turn in a rash and negligent manner and in an uncontrollable speed in a crooked road and capsized. Due to the impact, the claimants in both MCOP's sustained injuries, all over the body. Therefore, the claimants have filed the claim petitions, claiming a sum of Rs.24,71,500/- and Rs.24,46,500/- respectively as compensation, which were restricted to Rs.5,00,000/-.

3.Since two persons have injured in the said accident, two MCOP.Nos.1018 & 1019 of 2009 were filed and a common judgment rendered by the Tribunal. As against the same, the Insurance company has filed these two CMA.Nos.1954 of 2012 & 901 of 2013. In the both CMA's the first respondents herein are the injured claimants. The owner of the vehicle/Kumar has filed any counter statement, stating that the vehicle is duly coverage under Insurance Policy.

4.The appellant/Insurance company is the second respondent before the Tribunal. It has taken a specific plea that the nature of the policy is an Act one, Policy i.e., third party policy and as such both the injured/claimants in the respective MCOP's, who travelled in the Tractor contrary to the Policy condition. As per the policy, seating capacity of the Tractor is only one, for driver. Though the claimants are allegedly engaged for loading and unloading the goods, being carried in the Tractor, they are not supposed to sit on the mudguard of the Tractor. Hence, the Insurance company cannot be mulcted with the liability and further stated that the owner-cum-driver of the Tractor had driven the Tractor at the time of accident. Therefore, the Insurance company cannot be mulcted with the liability, when there is a violation of policy condition.

5.Before the Tribunal, in order to sustain their claims, the injured claimants examined themselves as PW.1 & PW.2, Dr.Krishnakumar was examined as PW.3 & PW.4 and twelve documents have been marked as Exs.P1 to P12. On the respondents side, one RTO officer was examined as RW.1 & one Kumar/owner of the Tractor was examined as RW.2 and Ex.R1/Driving license was marked.

6.The Tribunal passed award in MCOP.Nos.1018 & 1019 of 2009, a sum of Rs.1,19,000/- and Rs.1,02,000/- as compensation respectively to the respective claimants and held that both the owner of the vehicle as well as the Insurance company are jointly and severally liable to pay the compensation. Hence, the appellant/Insurance company has come up with the present appeal before this Court.

7.The learned counsel for the Insurance company in both the cases would contend that at the time of accident, the nature of the policy as per Ex.P2/Policy copy, which is a third party policy. PW.1 & PW.2 have travelled in the Tractor styled as load-man, in the absence of any premium being paid, the Tribunal ought to have exonerated the Insurance company from the liability.

8.Keeping on the submissions made by the learned counsel appearing for the appellant/Insurance company against the Judgment rendered by the Tribunal, and on perusal of Ex.P2/Policy, it is mentioned as Miscellaneous and Special Type of Vehicles Policy and Act one policy. Admittedly, both PW.1 and PW.2, claimants have travelled in the Tractor in the mudguard and hence they are not third party. Furthermore, it has to be stated that the Tractor is not meant for carrying passengers and having only one seat, the claimants have travelled as unauthorised passenger and also taking note of the fact that the Insurance Policy is only an Act one policy. Hence, the Insurance company cannot be mulcted with the liability.

9.For the foregoing reasons, I am of the opinion that the appellant/Insurance Company is not liable to pay compensation amount to the claimants, by indemnifying the owner of the tractor, since the claimants had travelled only as unauthorized passengers in the Tractor, which is not meant for carrying passengers and the policy is also an Act one policy.

10.In the result,

(i) the Civil Miscellaneous Appeals filed by the appellant/Insurance company are allowed and this Court directs the owner of the Tractor to pay the award of compensation as awarded by the Tribunal to the claimants.

(ii) the findings of the Tribunal in fixing the liability on the part of the appellant herein/Insurance Company is set aside and the appellant/Insurance Company is exonerated from its liability to pay the compensation amount and the Insurance Company is entitled to withdraw the amount, if any deposited by them.

(iii) the claimants are entitled to workout their remedy as against the owner of the Tractor to recover the compensation amount. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate at Dharmapuri.

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

+lcc to Mr.R.Selvakumar, Advocate Sr.67896

C.M.A.No.1954 of 2012 and CMA.No.901 of 2013
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MP.No.1 of 2012 and MP.No.1 of 2013

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srg 23/10/2019

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