IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.04.2019

Judgment Delivered on : 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2443 of 2012
and
M.P.No.1 of 2012

M/s.United India Insurance Co.Ltd.,
Branch Office,
No.2, Paramathi Road,
Namakkal District.

...Appellant/ III Respondent

Vs.

1.Pommanaicker ..1st Respondent/ Petitioner
2.K.Pavayee
3.The New India Assurance Co.Ltd.,
Divisional Office,
No.2, Paramathi Road,
Namakkal District. ...2&3 Respondents/1&2 Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.12.2011, in M.C.O.P.No.1127 of 2000, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Namakkal.

For Appellant : M/s.I.Malar

For R1 : Mr.C.Thangaraju

For R2 : No appearance

For R3 : Mr.G.Udaya Sankar for R3

JUDGMENT

The third respondent before the Tribunal/ Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.1127 of 2000 on the ground of claiming compensation for the accidental injuries taken place on 19.11.2000 and also on the liability.

2. The claimant filed the claim petition alleging that on 19.11.2000 at about 1.00 A.M at Pillikalpalayam, Vazavandhi to Kannampalayam Road. While, the claimant was travelling along with his goods in a mini-auto bearing Registration No.TN 33 V 2143 which is owned by the 1st respondent driven by its driver in a rash and negligent manner and at that time, the driver applied sudden break without observing the traffic rules in which cause this accident and the mini auto become capsized. The paramathi Police has registered a case against the driver of the offending vehicle in Crime No.195/2000, under Section 279,337 of I.P.C.

3. The Insurance Company which had arrayed as third respondent before the Tribunal, filed a counter statement denying the age, avocation and alleged income of the claim petition and inter-alia contended that the vehicle bearing Registration No.TN 33 V 2143 involved in the accident is a LMV Goods Vehicle, which is not permitted to carry passengers. At the time of accident, there were more than 10 persons travelled in the goods vehicle in violation of the provisions of the Motor Vehicles Act and the conditions of policy.

4. Before the Tribunal, the injured was examined himself as P.W.1 and Exhibits P1 to P9 were marked. On behalf of the respondents, the Assistant Manager from the appellant/Insurance Company was examined as R.W.1 and Exhibit R1-Certified copy of Insurance Policy was marked.

5. On a consideration of both oral and documentary evidence, the Tribunal has held that due to the rash and negligent driving of the driver of the auto in which, the claim petitioner had travelled as a owner of the goods carrying three Banana Trees for the condolence, is responsible for the accident and also held that in view of Ex.R1-copy of the Insurance Policy, the third respondent namely, the Insurance Company is jointly and severally liable to pay the compensation and awarded a compensation of Rs.64,650/-.

6. It is seen that originally, the M.C.O.P was dismissed for default on 19.09.2005. Then by an order in I.A.No.76 of 2010, dated 19.08.2010, the same was restored to file with a condition that the claimant/petitioner is not entitled for any interest for the default period. So, it is held that the claimant/petitioner is not entitled for any interest for the period between 19.09.2005 to 19.08.2010.

7. According to the appellant/Insurance Company, the injured was a un-authorized passenger in the offending vehicle at the time of the accident. Both P.W.1 as well as R.W.1 had categorically stated that the claimant/petitioner has hired the

auto to carry three Banana Trees for the condolence and after unloading the same, he was on his way back home and at that time, the accident has taken place and hence, the Tribunal has held that is not an un-authorized passenger and awarded compensation and the same was under challenge before this Court.

8. In the decision reported in 2007(2) TN MAC 34 [P.Prakash Vs.1.Thandivelu and 2. United India Insurance Co.Ltd] in C.M.A.No.2779 of 2009, this Court held as follows:-

> "Person travelling in Goods Vehicle to take delivery of goods on behalf of Owner of goods or while returning after delivering goods and would fall within definition of "Authorized Representative of Owner of goods"by a legal fiction to advance beneficial object of Act and any strict interpretation would defeat very object and purpose of Statutory requirement of compulsory insurance under Section 147 and therefore, Insurer liable in all cases where Loadman travelling in empty goods vehicle either on its way to take delivery of goods or after delivering of goods as Authorized Representative of Owner of goods, becomes victim of accident caused due to negligence of Driver of Goods vehicle."

9. In view of the said decision and as per the ratio laid down in the said decision coupled with the admitted facts of this case as admitted by R.W.1, the staff of the Insurance Company, the injured had hired the vehicle to carry the goods and he was returning after unloading the goods carry and hiring his both ways.

10. In view of the above admitted position as elicited from the cross-examination of R.W.1, coupled with the above decision of this Court, the finding rendered by the Tribunal that the injured has travelled as authorized passenger in the goods vehicle and not as an un-authorized passenger which does not call for interference and the same is hereby confirmed. On a perusal of the quantum of compensation awarded by the Tribunal, it is appears to be just and reasonable and hence, the compensation is confirmed.

11. On the point of quantum, after hearing both sides and after perusing the records, I find that the compensation awarded under different heads is just and reasonable and they cannot be termed as excessive. In this view of the matter, the said compensation is confirmed.

12. 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 appellant-Insurance Company is 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 depostied to the credit of M.C.O.P.No.1127 of 2000 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Namakkal within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS Iv)

//True Copy//
Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Namakkal.

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

+2ccs to Mr.C.Thangaraju , Advocate SR.No. 62885
+1cc to Mr.Udaya sankar , Advocate SR.No. 62169

C.M.A.No.2443 of 2012

A.SK(16/12/2019)