IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 12.02.2019]

[PRONOUNCED ON : 05.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.556 of 2011
and
M.P.No.1 of 2011

National Insurance Company Ltd.,
Divisional Office-II,
11, Ramakrishnan Road,
Salem - 4. ... Appellant

.. Vs ..

1. Duraisamy
2. Venkateswaran ... Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.10.2010 made in M.C.O.P.No.1055 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : No Appearance

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JUDGMENT

The Insurance Company has preferred this appeal against the award dated 18.10.2010 passed by the learned Principal Subordinate Judge, Motor Accidents Claims Tribunal, Salem, in M.C.O.P.No.1055 of 2005 questioning both on the liability as well as on the quantum of compensation.

2. The accident in this case happened on 06.10.2005, at about 02.30 p.m., while the claimant was travelling as a load man in an auto bearing Registration No.TN-30-E-5531 near Authumedu bus stop on the Belur-Thumbal main road. Due to the accident, the injured/claimant sustained severe fracture and injuries all over the body. For the injuries sustained by him, the claimant/first respondent herein has filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. The injured/claimant examined himself as P.W.1 and Doctor was examined as P.W.2 and one Mr.P.Elaiyaraja was examined as P.W.3 and documents Exs.P.1 to P.6 were marked on the side of the injured/claimant. On behalf of the respondents before the Tribunal, three witnesses were examined as R.Ws.1 to 3 and documents Exs.R.1 to R.3 were marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.1,06,367/- together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit as compensation. As against the said award passed by the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Salem, the Insurance Company has preferred this appeal before this Court.

5. Learned counsel appearing for the appellant/Insurance Company relying upon the evidence of R.W.1 to R.W.3 and Exs.R.1 to R.3 contended that the seating capacity of the offending vehicle (Mini door auto) is only one, which is meant for the driver and for the same, Insurance coverage has to be given. When that being the case, the unauthorized passenger or the owner of the goods cannot come within the coverage of the policy. From the evidence of R.W.1, it is seen that the seating capacity of the Mini door auto is only one. The Tribunal has observed that the injured was travelled in the offending vehicle as a owner of the goods after unloading the goods in Salem Shevapet Shandy. Thereafter, he returned in the same vehicle with empty gunny bags and bamboo baskets and at that time, the vehicle met with an accident. Learned counsel appearing for the appellant/Insurance Company would further submit that even assuming that the claimant is the owner of the goods, in view of the fact that he has travelled in the vehicle, which is covered only for one person, the Insurance Company has no liability to pay compensation.

6. Learned counsel appearing for the first respondent/claimant would contend that the injured/claimant as owner of the goods was returning after unloading the luggages and gunny bags at Salem Shevapet Shandy and as such, the nature of the policy is extended to package policy and hence, the judgment passed by the Tribunal is just and proper and prayed for dismissal of the appeal.

7. After hearing the learned counsel appearing on either side and also after perusing the evidence of P.W.1 coupled with Ex.P.1-FIR, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the second respondent herein viz., the driver of the mini door auto.

8. It appears that P.W.1, in his evidence, had deposed that the accident took place only due to the rash and negligent driving of the auto driver. P.W.3, who is the auto driver, in his evidence has clearly admits about the accident. In respect of the accident, as per Ex.P.1-F.I.R., the case was registered as against P.W.3. The version of P.W.1 corroborates with Ex.P.1 and no contra evidence was adduced. Hence, the Tribunal has held that the accident took place only due to the rash and negligent driving of P.W.3, who is the driver of the Mini door auto and this point is answered accordingly.

9. It appears from Ex.P.1 that the commercial vehicle was engaged by the injured/claimant to carry his country-jaggers stock from his native village to Salem Shevapet Shandy and the stock was unloaded in the Shandy and while the claimant was returning in the same vehicle, the accident has taken place. It remains to be stated that P.W.3 also categorically stated that the claimant was travelled on return with his empty gunny bags and bamboo baskets. In the absence of any contra evidence and taking note of the entire evidence of P.W.3 which was duly corroborated by the version in Ex.P.1-FIR which came into existence immediately after the accident, the Tribunal has categorically given a finding that after paying to and fro charges by the claimant, he went to Salem Shevapet Shandy and was returning and as such, the evidence of P.W.3 is also not rebutted by any other evidence of insurance company and hence, the Tribunal has given a categorical finding that the injured/claimant was travelled as a owner of the goods and not as an unauthrozed passenger and his evidence was duly corroborated by the evidence of P.W.3 and Ex.P.1. In the absence of any positive evidence, the same is hereby confirmed and hence, the claimant is entitled for policy coverage, in view of the nature of the policy as could be seen from the terms of the policy which is marked as Ex.R.2.

10. This Court is of the view that the claimant, who was returning after unloading the goods, is entitled for coverage also stands fortified by the decision of this Court reported in 2017 (2) TNMAC 34 [P.Prakash Vs. Thandivelu] and hence, in view of the above factual finding that the injured/claimant was travelled as a owner of the goods and in view of the nature of the policy, both the appellant/insurance company and the owner are jointly and severally liable to pay compensation to the claimant. The quantum of compensation awarded by the Tribunal, on re-appreciation of all the heads, appears to be fair and reasonable and hence, the same is hereby confirmed.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 18.10.2010 passed by the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Salem,

in M.C.O.P.No.1055 of 2005, is confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

12. If the award amount with accrued interest has not been deposited, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.1055 of 2005 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent/claimant is permitted to withdraw the same, less the amount already withdrawn, if any.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

Jrl

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.D.Bhaskaran, Advocate, SR.No.56366.

Judgment in
C.M.A.No.556 of 2011

RR (CO)
CSR(03/01/2019)