IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :25.02.2019
Judgment Pronounced on :16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.593 of 2011
and
M.P.No.1 of 2011

The Divisional Manager,
The United India Insurance Company Limited,
Vellore.
...Appellant/R2

Vs.

1.Chinnakulanthai ..R1/Petitioner
2.A.Kumar ... R2/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.08.2010 in M.C.O.P.No. 660 of 2003, on the file of the Motor Accidents Claims Tribunal, (Principal Sub Judge), Thiruvannamalai.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.Kaithamalaikumaran

For R2 : Mr.V.Prakash Babu

J U D G M E N T

The Insurance Company is the appellant herein.

2. The first respondent is the injured who travelled in the lorry being Registration No.MTF 3205 claimed compensation by filing petition alleging that he travelled in the lorry on 19.08.1996 and due to the rash and negligent of the driver of the lorry. The lorry driver has lost its balance and hit against the tamarind tree and he sustained bodily injuries and also had suffered fracture on his left leg and hip.

3. Before the Tribunal, the injured examined himself as P.W.1 and marked Exhibit P1 F.I.R, Exhibit P2 wound certificate, Exhibit P3 Motor vehicle inspector's report and Exhibit P4 copy of the order in M.C.O.P.No.1102 of 1997. The Doctor who examined the injured was examined as P.W.2 and through him Exhibit P5 Permanent Disability Certificate and Exhibit P6 X-ray were marked. On behalf of the respondents before the Tribunal, no one was examined and no document had been filed.

4. Before the Tribunal, the Insurance Company has taken a specific plea that the injured travelled in the lorry as un-authorized passenger and therefore, the Insurance Company is not liable to pay the compensation.

5. The Tribunal, relying upon Exhibit P4 order in M.C.O.P.No.1102 of 1997 passed by the District Court, T.V.Malai in respect of the fatal case arising out of the very same accident wherein, the Insurance Company has deposited the amount and the legal representatives of the deceased in the said accident had also withdrawn the same and based upon the other evidence, has held that the driver of the lorry was rash and negligent resulted in causing the accident and following the M.C.O.P decree in the above said decree wherein, the Insurance Company has deposited the amount and also withdrawn by the legal representatives, has held both respondents therein should jointly and severally pay the compensation and proceeded to assess the quantum. In the present case, based upon the evidence of P.W.2 Doctor and Exhibit P5 Disability Certificate, the Tribunal awarded a sum of Rs.90,000/-.

6. On the point of quantum, both the parties are heard.

7. After going through the quantum of compensation awarded, I am of the considered view that the award passed by the Tribunal on the point of quantum is just and fair and the same is hereby confirmed.

8. After hearing both the parties on the point of status of the injured who travelled in the lorry, for the reasons best known to the respondents, namely, the owner of the vehicle or the Insurance Company, has not let in any evidence before the Tribunal either oral or documentary and it assumes significance.

9. It is to be stated that P.W.1 has categorically stated that he travelled in the said lorry and in the absence of any contra evidence or any positive evidence to show and demonstrate that the injured has travelled as un-authorized passenger, the Tribunal has rightly come to the conclusion that the Insurance coverage is applicable and held both the owner and the lorry as well as the Insurance Company jointly and severally liable to

pay the compensation and in view of the above said reasoning and in the absence of any positive evidence to show had demonstrate the status of the injured, in view of the specific evidence of P.W.1 and in the absence of any positive evidence much less any evidence contra to the version of P.W.1, the Insurance Company cannot be exonerated of the liability.

10. In the result,

i) This Civil Miscellaneous Appeal fails and is dismissed.No costs.

ii) The Insurance Company shall deposit the amount if any (not yet deposited), within a period of eight weeks from the date of receipt of a copy of this judgment.

iii) On such deposit being made, the claimant shall withdraw the same in accordance with law. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal,
(Principal Sub Judge), Thiruvannamalai.

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

+1 CC to Mr.D.Bhaskaran, Advocate sr 37421.
+1 CC to Mr.V.Prakash Babu, Advocate sr 38114
+1 CC to Mr.S. Kaithamalai Kumaran, Advocate sr 37518.

C.M.A.No.593 of 2011and
M.P.No.1 of 2011

RV(CO)
SP(27/08/2019)