IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.291 OF 2015
AND
M.P. 1 OF 2015

The Divisional Manager,
United India Insurance Co.Ltd.,
TKM Complex,
Katpadi Road, Vellore-04. .. Appellant/2nd Respondent

Vs.

1. Jeyaraj .. 1st Respondent/Petitioner
2. Jafarkhan
3. Akmal Basha
4. The Divisional Manager,
   New India Assurance Company Ltd.,
   CSI Complex, No.1, Officer's Line,
   Vellore-01.
   (R2 to R4 set exparty before the trial Court)

..Respondents 2 to 4/
Respondents 1, 3 & 4

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2013, passed in M.C. O.P. No. 225 of 2004 on the file on Motor Accidents Tribunal, Principal Sub Judge, Tiruvannamalai.

For Appellant : M/s.K.Saraswathi
For M/s.C.R.Krishnamoorthy

For Respondents : Mr.T.Panchatsaram for R1
RR2 to RR4-Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award dated 05.04.2013, passed in M.C. O.P. No. 225 of 2004 on the file on Motor Accidents Tribunal, Principal Sub Judge, Tiruvannamalai.

2. Brief facts leading the claim petition is that on 27.01.1999 at 1.00am when the claimant was travelling in a tempo van bearing Reg.No. KA 06-3123 belongs to the 1st respondent and when the said tempo was proceeding on the Krishnagiri National High Way, the driver of the 1st respondent's vehicle drove the same in a very rash and negligent matter and dashed against a stationed lorry bearing Reg.No. MCY- 13 belongs to the 3rd respondent. Due to the said accident, the persons travelled along with the claimant in the said tempo have sustained injuries and the claimant also sustained grevious injuries all over the body. The claimant was given treatment in Krishnagiri Government Hospital. Since the accident was occurred due to the carelessness and negligence driving on the part of the driver of the tempo, the claimant has filed the claim petition against the respondents, claiming a sum of RS.3,00,000/- as compensation.

3. The Insurance Company, who is the appellant herein before the tribunal has filed the counter statement denying the mode of accident as narrated by the claimant. Further stated that totally 40 persons were allowed to travel in the said goods vehicle, which is against the policy condition, hence the owner of the vehicle is liable to pay any compensation. It is also stated that the compensation claimed by the claimant under various heads is not acceptable and he has to prove the age, occupation and nature of injury and the details of treatment taken by him. Therefore, the Insurance Company is liable to pay any compensation.

4. The tribunal upon analysing the oral pleadings and documents, has come to the conclusion that the said accident has occurred only due to the rash and negligence on the part of the driver of the 1st respondents' vehicle and awarded and a sum of Rs.1,11,000/- as compensation under various heads. Since the said vehicle is insured with the 2nd respondent/United India Insurance, the tribunal has directed the Insurance company/Appellant herein to pay the compensation to the claimant at the first instance and thereafter recover the same from the owner of the vehicle.

5. Aggrieved against the said award and liability, the United Insurance Company has preferred the appeal to set aside the same.

6. In the grounds of appeal, the appellant/Insurance Company has contended that the petitioner along with 24 persons travelled int eh goods carriage vehicle as gratuitous passengers and the tribunal committed error in awarding compensation and

also fixing liability on this appellant. Further it is contended that Ex.R1 Policy is a good policy and hence there is clear violation of policy condition. The other grounds raised is the determination of compensation is not fair. The other grievance of the appellant is that when the Insurance Company is not statutorily required to cover the liability in respect of an unauthorised passenger in a goods vehicle , the tribunal has fixed the liability on part of the appellant/Insurance Company is not fair. Further, the sum awarded also denied by the appellant as excessive.

7. Heard the learned counsel for the appellant and perused the documents available on record. No representation on behalf of the respondents.

8. On perusal of the FIR, it is seen that the passengers along with other persons traveled in the said vehicle as gratuitous passengers. The evidence of PW1 also reveals that there are totally 25 passengers were travelled in the said vehicle. It is also seen that the policy taken for the vehicle involved in the said accident is an Act Policy, which is not authorized to carry any passengers and it prohibits the carrying passengers and therefore there is a violation of policy conditions. The tribunal by relying upon the judgment reported in 2012 (7) MLJ 359 in the case of New Indian Assurance Company Ltd., Vellore Vs. Tilak and Others, has observed that since the 1st respondent/owner of vehicle allowed the passengers to travel in his vehicle against the policy conditions and considering the fact that the said vehicle is insured with this appellant, has come to conclusion that the Insurance company has to pay compensation to the claimant at the first instance and recover the same from the owner of the vehicle. This Court also concurs with the said findings of the tribunal.

9. Now coming to the compensation awarded by the tribunal, it is seen from the award that the tribunal has considered the evidence of PW2 - doctor, who deposed that the claimant had sustained fractures in his rib and also on the right of his chest, which are severe in nature and assessed the disability at 35% and awarded a sum of Rs.70,000/- towards disability and Rs.25,000/- towards pain and suffering caused due to the said disability. Though the claimant has claimed a sum of RS.50,000/- towards Medical expenses and transport charges, the tribunal has rightly observed the fact that the claimant has not produced any documents to prove the same since, has taken treatment in Government Hospital. Therefore, the tribunal has awarded a sum of Rs.5,000/- each under the heads 'Transport expenses' and 'Extra nourishment'. Further, the sum awarded under the head 'Loss of In come' at Rs.6,000/- is also found proper in the absence of documents to prove the income of the claimant. On

whole, the sum awarded by the tribunal as compensation is proper and reasonable and this Court find no reason to interfere with the said compensation. Accordingly, the same is confirmed.

10. With regard to the liability, it is clear that from the Ex.P1- FIR that in the offending vehicle/good vehicle totally 25 persons were traveled, which is against the policy condition and no doubt that as on date of the accident, policy was alive. Even though, it is well settled that when the goods carriage vehicle is being used for the purpose of transporting passengers, it would amount to a violation of policy condition and in that event, the insurance company cannot be made liable to pay the compensation amount. This Court by taking into considering the injuries sustained by the claimant, finds it proper to rely upon the Judgment of this Court reported in 2012(7) MLJ 359 in the case of New India Assurance Company Ltd., Vellore Vs. Thilaga and others. Wherein this Court has directed the Insurance Company to satisfy the award amount in favour of the claimants at the first instance and thereafter recover the amount from the owner of the vehicle. The relevant portion of the judgment is extracted below;

> "Motor Vehilces ACt (59 of 1988), Section 147 - Accident Claim- Award of compensation - Appeal - Liability of Insurance Company with respect to gratuitous passengers, disputed - Held, evidence shows that injured claimant and deceased travelled as gratuitous passengers in van - Insurer was not liable to make payment of compensation and it was the owner who has to make payment to claimants - Appellant Insurance Company directed to first satisfy award amount infavour of claimants and thereafter, recover amount from owner of vehicle - Appeals disposed of."

11. The tribunal has also rightly observed the said fact and passed an award directing the Insurance Company/Appellant herein to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle. This Court also concurs with the findings of the tribunal.

12. In view of the above discussion, the award passed by the tribunal in MCOP. No. 225 of 2004 dated 05.04.2013 is confirmed. The Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition if any, is closed.

13. Since it is represented by the appellant/Insurance Company that they have deposited the entire amount awarded by the tribunal, the Insurance Company is permitted to recover the same from the owner of the vehicle/ 2nd respondent herein

without initiating separate proceedings. The tribunal is directed to transfer the amount to the claimant's bank account through RTGS within two weeks from the date of receipt of a copy of this Order, if not already transferred.

Sd/-
Assistant Registrar (Spl Cell-Retd Judges)

//True Copy//

Sub Assistant Registrar

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To

The Principal Sub Judge,
Motor Accidents Tribunal,
Tiruvannamalai.

+1cc to M/s.C.R.Krishnamoorthy, Advocate, S.R.No.48846
+1cc to Mr.T.Panchatsaram, Advocate, S.R.No.49944

C.M.A.No.291 of 2015
and M.P.1 of 2015

RSI(CO)
CS/13/02/2020