

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 20.03.2019]

[PRONOUNCED ON : 13.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.561 of 2012

M/s. United India Insurance Company Ltd.,
No.108-A, Attur Road,
Rasipuram. Appellant/4th Respondent

... Vs ...

1. Sathyabhama ...1st Respondent/Petitioner
2. S.Valliappan
(R-2 set ex-parte in the lower Court)
3. M/s. New India Assurance Company Ltd.,
Virudhunagar District.

4. P.Murugesan ...Respondents 2 to 4/Respondents 1 to 3

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.12.2002 made in M.C.O.P.No.377 of 2002 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Fast Track Court No.3, Namakkal.

For Appellant : Mr.G.Sudha
for M/s.N.Mala

For RR-1 to 4 : No Appearance
For R-2 : Ex-parte
For R-3 : Mr.M.Krishnamoorthy

JUDGMENT

The Insurance Company is the appellant herein challenging the award passed by the Motor Accidents Claims Tribunal [Additional District Judge], Fast Track Court No.3, Namakkal, in M.C.O.P.No.377 of 2002 on the ground of liability.

2. The short facts that are essential for the disposal of this appeal is that on 17.04.1997 at about 15.30 hours, while the claimant was travelling in a TATA 407 Truck bearing Registration No.TN-28-Z-8998 from Mohanur Navaladiyan Koil to Gurusampalayam and nearing to Ealur Pirivu Road, a Lorry

bearing Registration No.TN-67-A-1050 came in the opposite direction in a rash and negligent manner with high speed without blowing any horn or signals and hit against the TATA 407 Truck. As a result of which, the claimant has sustained grievous injuries in her both color bones, fracture on her right leg along with some injuries all over her body. For the injuries sustained by her in the said accident, the injured/claimant has filed a claim petition before the Tribunal in M.C.O.P.No.377 of 2002 claiming a sum of Rs.1,00,000/- as compensation.

3. Before the Tribunal, on behalf of the claimant, the injured/claimant examined herself as P.W.1 and Dr.Sivalingam was examined as P.W.2 and documents Exs.P.1 to P.9 were marked. On the side of the Insurance Company, one Mr.Sankara Narayanan, Assistant Administrative Officer was examined as R.W.1 and Policy Copy was marked as Ex.R.1.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.60,000/- together with interest at 9% per annum from the date of claim petition till the date of deposit and costs to the claimant and directed the respondents 3 and 4 respondents (before the Tribunal)/4th respondent herein and appellant herein respectively, to pay the said compensation amount. Further, the Tribunal had dismissed the claim petition insofar as respondents 1 and 2 (before the Tribunal)/respondents 2 and 3 herein respectively, are concerned. As against the said award passed by the Tribunal directing the appellant herein to pay compensation to the claimant, the appellant herein/Insurance Company has preferred this civil miscellaneous appeal before this Court.

5. It is seen from the records that the second respondent herein is the owner of the Lorry bearing Registration No.TN-67-A-1050 and the third respondent herein is the insurer of the said Lorry. The fourth respondent herein is the owner of the said Truck bearing Registration No.TN-28-Z-8998 and the appellant herein is the insurer of the said Truck.

6. The core point that has to be decided in this appeal is that whether the appellant/Insurance Company can be mulcted with any liability as the injured namely, Sathyabhama has travelled in the TATA 407 Truck bearing Registration No.TN-28-Z-8998 as an unauthorized passenger.

7. It remains to be stated that based upon the documentary evidence Ex.P.1/FIR, Ex.P.2/Charge Sheet, Ex.P.3/Motor Vehicle Inspector's Inspection Report, Ex.P.4/Rough Sketch and Ex.P.5/Xerox copy of Judgment, the Tribunal has given a categorical finding that the FIR was registered against the driver of the fourth respondent herein and the police had filed the charge sheet against the driver of the fourth respondent herein and the driver has pleaded

guilty and also paid the fine as could be seen from Ex.P.5-Judgment copy.

8. Furthermore, based upon Ex.P.4-Rough Sketch, the Tribunal has given a categorical finding that the Container Lorry bearing Registration No.TN-67-A-1050 belongs to the first respondent (before the Tribunal) came in the right direction and at that time, the Truck bearing Registration No.TN-28-Z-8998 came in the wrong direction and caused the accident and accordingly, held that the accident has taken place due to the rash and negligent driving of the driver of the Truck bearing Registration No.TN-28-Z-8998 belongs to the third respondent (before the Tribunal)/fourth respondent herein. This Court is of the considered view that in the absence of any contra evidence, the said finding arrived at by the Tribunal is hereby confirmed.

9. Considering the above factual background, the accident had occurred only due to the rash and negligent driving of the driver of the fourth respondent herein, in whose vehicle, the first respondent herein/claimant had travelled. Admittedly, the vehicle is a goods carrier vehicle and the claimant/P.W.1 has not stated under what capacity she had travelled in the said vehicle on the date of occurrence. In the absence of any positive evidence to show that the claimant was authorized by owner or anyone of his employees, this Court is of the considered view that the claim petitioner had travelled in the said vehicle as an unauthorized passenger and as such, the policy covered in respect of the fourth respondent's vehicle is of goods carrier vehicle.

10. In this regard, it is relevant to extract a Division Bench judgment of this Court in C.M.A.Nos.1529 to 1533 of 2015 [Bharati AXA General Insurance Co. Ltd., Vs. Aandi and another], wherein, the Division Bench of this Court has held that all the persons viz., the deceased as well as the injured claimants were unauthorized passengers in the goods vehicle and hence, the Insurance Company cannot be made liable to pay the compensation.

11. In this case, the first respondent herein/claimant has travelled as an unauthorized passenger in a goods carrier viz., Truck bearing Registration No.TN-28-Z-8998, belongs to the fourth respondent herein and hence, the appellant/Insurance Company cannot be mulcted with any liability to pay the compensation to the claimant.

12. In view of the above factual position coupled with the legal position as enumerated by this Court as extracted above, this Court is of the considered view that the finding of the Tribunal that the insurance company is liable to pay compensation is liable to be vacated and accordingly, it is hereby modified to the limited extent, lifting the fastening of liability on the part of the insurance company only.

13. After perusing the award, it is seen that the quantum of compensation awarded by the Tribunal under various heads, is found to be just and reasonable and accordingly, the same is hereby confirmed.

14. In the result,

[i] The Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is hereby modified to the effect that the liability of the insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimant and if any amount is already deposited by the insurance company, it is permitted to withdraw the said amount.

[ii] The fourth respondent herein, who is the owner of the Truck bearing Registration No.TN-28-Z-8998, is directed to deposit the entire award amount along with interest at the rate of 9% per annum from the date of claim petition and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.377 of 2002 on the file of the Motor Accidents Claims Tribunal, [Additional District Judge], Fast Track Court No.3, Namakkal, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit, the first respondent herein/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any.

[iv] There shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

Jr1

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.3, Namakkal.

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

+lcc to Mr.M.Krishnamoorthy, Advocate SR.No.68996

C.M.A.No.561 of 2012

SPD (CO)
GMY (21/02/2020)



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