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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.849 of 2015
and M.P.No.1 of 2015

The Divisional Manager,
United India Insurance Co. Ltd.,
Having Office at No.46-51,
T.K.M.Complex, Katpadi Road,
Vellore.

... Appellant/2nd Respondent

Vs.

1.Anbalagan

...R1/Petitioner

2.V.Chandran

... R2/R1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.05.2014 made in M.C.O.P.No.59 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

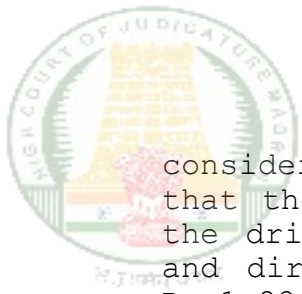
For Appellant : Mr.S.Arunkumar

For R1 : Mr.C.Prabakaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 27.05.2014 made in M.C.O.P.No.59 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.59 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.01.2011. The Tribunal,



considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace van belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.1,22,000/- as compensation to the 1st respondent. Against the said award dated 27.05.2014 made in M.C.O.P.No.59 of 2012, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent travelled in the goods vehicle as unauthorised passenger. The 2nd respondent has carried the gratuitous passengers in the goods vehicle contrary to the contract and permit under the Motor Vehicles Act. In such circumstances, the 2nd respondent/owner of the vehicle has violated the policy condition. The Tribunal without appreciating these facts, erroneously fastened liability on the appellant and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent travelled in the van as owner of the goods and he made averments to that effect in the claim petition and deposed as PW1. The appellant has not denied the status of the 1st respondent as owner of the goods and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent and perused all the materials available on record.

6.From the materials available on record, it is seen that the 1st respondent has contended that while he was travelling as owner of the goods in the vehicle belonging to the 2nd respondent, the driver of the vehicle drove the same in a rash and negligent manner and caused the accident. He deposed as PW1 to that effect. The appellant in the counter statement has not specifically pleaded that the 1st respondent is a gratuitous passenger and the appellant is not liable to pay any compensation. From the award of the Tribunal, it is seen that this issue was not raised before the Tribunal. In view of the same, it is not open to the appellant to contend now in the appeal that the 1st respondent was a gratuitous passenger and the appellant is not liable to pay compensation. For the above reason, the award of the Tribunal does not warrant any interference by this Court and the same is hereby confirmed.

7. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,22,000/- awarded by the Tribunal



as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.59 of 2012. On such deposit, the 1st respondent/claimant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.No.30608

+1cc to Mr.C.Prabakaran, Advocate SR.No.29652

C.M.A.No.849 of 2015

RV(CO)
GMY(10/12/2019)