

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A. No.763 of 2012

and

M.P.No.1 of 2012

B.Vasuki Appellant/1st Respondent

Vs

1.P.Jaganathan1st Respondent/Petitioner

2.ICICI Lombard General Insurance Company Ltd.,
Chnottabal Centre,
No.140, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.2nd Respondent/2nd Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 10.06.2010 made in M.C.O.P.No.32 of 2007 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Chengalpet.

For Appellant : Mr.S.Udaya Kumar
For R1 : No appearance
For R2 : Mr.Sreevidha

J U D G M E N T

The facts of the case are that on 14.01.2007 at about 14.30hours, the first respondent was travelling in the auto-rickshaw bearing Reg.No.TN-21-K-3013 belonging to the appellant herein and insured with the second respondent Insurance Company. When he tried to turn the vehicle towards left side, due to the rash and negligent driving, the auto-rickshaw slid on the left side. Due to the said impact, the first respondent sustained grievous injuries and fractures. He filed a claim petition before the Tribunal claiming a sum of Rs.3,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.93,460/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal has directed the appellant herein / owner of the vehicle to pay compensation

to the claimant, thus exonerating the Insurance Company, on the ground of violation of policy conditions by the owner of the vehicle.

2.Challenging the same, the owner of the vehicle has filed this appeal.

3.The main grounds raised by the appellant in this appeal are that (i)The Tribunal has failed to carefully peruse the RC Book in respect of the vehicle in question. (ii)The Insurance Company has played a fraud while issuing the policy mentioning the seating capacity of the vehicle as two instead of three and based upon such document, the Tribunal has arrived at the findings which cannot be countenanced. (iii)The appellant herein has not been served with notice in the MCOP and based upon the misrepresentation by the Insurance Company, the Tribunal has passed the impugned judgment and hence, the same has to be set aside.

4.However, the learned counsel for the appellant during the course of argument, submitted that there are some other documents available even at the time of accident, which the appellant failed to produce before the Tribunal. The learned counsel has also submitted that the award has been passed by the Tribunal based on misrepresentation of facts by the Insurance Company. Stating so, the learned counsel prayed for setting aside the impugned judgment and to remit the matter to the Tribunal for fresh consideration.

5.The learned counsel appearing for the second respondent has no objection in remanding the matter to the Tribunal for fresh consideration.

6.Considering the submission now made by the learned counsel for the appellant that the documents which were very much available during the period of hearing of M.C.O.P.No.32 of 2007 itself have not been placed before the Tribunal for consideration while passing the award and also taking note of no objection expressed by the learned counsel for the second respondent, the impugned judgment and decree are set aside and the matter is remanded back to the Tribunal for passing appropriate orders afresh, within a period of three months from the date of receipt of a copy of this judgment. It is made clear that necessary documents have to be filed before the Tribunal by the appellant and on filing such documents, the same shall be considered by the Tribunal on merits and in accordance with law, without being influenced by any of the observations made by the Tribunal in the award in M.C.O.P.No.32 of 2007.

7.The Civil Miscellaneous Appeal is allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Chengalpet.

2.The Section officer,
VR Section, High Court,
Madras - 104.

+lcc to Mr.S.Udayakumar, Advocate Sr.72513
+lcc to Mrs.R.Sreevidhya, Advocate Sr.73959

C.M.A.No.763 of 2012

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srg 29/09/2020

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