

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2252 of 2014

and

M.P.No.01 of 2014

The New India Assurance Company Limited,
No.66, West Boulevard Road,
Tiruchirappalli-8. .. Appellant/2nd Respondent

Vs

1.Jayamani ..1st Respondent/Claimant

2.Sekar .. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 19.03.2014 made in M.C.O.P.No.48 of 2012 on the file of Motor Accident Claims Tribunal, (Principal District Court), Ariyalur.

For Appellant : Mrs.R.Sreevidhya

For R1 : No Appearance

For R2 : Mrs.R.Poornima

J U D G M E N T

सत्यमेव जयते

The appellant/New India Assurance Company Ltd., who is the second respondent in MCOP.No.48 of 2012, on the file of the Motor Accident Claims Tribunal, Principal District Court, Ariyalur, challenging the judgment and decree, dated 19.03.2014, by preferring the present appeal.

2. The case of the claimant/1st respondent is that on 27.07.2009, the first respondent and few members approached the second respondent for taking a rental vehicle to go to Kangiyankurichy to load the rice bags and plantain tree to attend a condolence. On 27.07.2009 at about 11.15AM, when the first respondent was going on the second respondent's vehicle

travelling as the owner of goods from west to east direction in the Jayankondam- Trichy Main Road near Thularankurichi lake, a vehicle bearing Registration No.TN-61-1802 TATA ACE belonging to the second respondent, which was being driven by its driver in a rash and negligent manner with over speed and without observing the traffic rules, was thrown upside down, thereby the claimant was thrown out of the vehicle. As a result, the first respondent sustained multiple grievous injuries all over the body.

3. In order to prove the case of the claimant before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P1 to P9 were marked. During the trial, on the side of the second respondent, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R39 were marked.

4. Based on the evidence both orally and documentary, the Tribunal has held that the accident has taken place, on account of rash and negligence driving of the driver of the TATA ACE and awarded a sum of Rs.43,000/- as compensation, payable by the Insurance Company. Challenging the award, the present appeal has been filed by the Insurance Company.

5. The learned counsel for the appellant submitted that the tribunal went wrong in holding the appellant is liable to pay the compensation of Rs.43,000/-. The Court below has failed to appreciate that in respect of a goods vehicle, carriage of passengers is not covered under the Insurance policy and as per Section 147 of M.V.Act, an insurer was not required to cover such unauthorized and gratuitous passengers. The Tribunal went wrong in holding that there was no prohibition nor any bar for the claimant to travel in the goods vehicle, inspite of the oral and documentary evidence of the appellant. As per FIR (Ex.P-1), the claimant along with 33 others were travelling in the goods vehicle to attend a funeral function. The Court below failed to appreciate that the vehicle involved was a small goods vehicle where 35 passengers were carried and the claimant tried to put up a false case that the vehicle was carrying rice bags and that she was travelling in the vehicle as owner of rice bags. In spite of accepting that the vehicle involved was a goods vehicle and that the driver of the vehicle had no valid license or badge to drive such goods vehicle, the Tribunal did not render any findings on the plea of liability raised by the appellant. Therefore, the Tribunal ought to have exonerated the appellant when the claimant was a gratuitous and unauthorized passenger in the goods vehicle and when the driver of the vehicle had no valid and effective driving licence to drive the same. Hence, the learned counsel prays to allow the appeal.

6. From the FIR, it is proved that due to rash and negligent driving of the driver, the said accident has occurred. Pursuant to the same, a case has been registered against the driver of

the said TATA ACE and no contrary evidence has been produced to dispute the same as against the driver of the TATA ACE. The driver of the TATA ACE has not been examined to say anything about the accident. In the absence of any such evidence, the owner of the vehicle is vicariously liable to pay the compensation to the claimant for driving the vehicle in a rash and negligent manner and for causing the accident. The appellant herein contended that the claimant has to prove the accident. Once the claimant had furnished the policy details in the claim petition, it is for the insurance company to produce the original copy of the policy to establish its contentions, thereby disproving the claimant's contention. Hence, it is found that the insurance company is not liable to pay the compensation.

7. The Court below had erroneously concluded that the insurer is liable to pay the compensation. The learned counsel for the appellant submitted that the policy condition has been violated by the owner of the vehicle and the 2nd respondent/owner of the vehicle ought to have been held liable to pay the compensation. Thus, in view of the specific finding rendered by the Tribunal with regard to the manner of the accident, the negligence aspect has been rightly fixed on the part of the driver however, finding of the Tribunal fastening the liability on the insurer of the tractor is baseless and unfounded. That apart, the Tribunal has rightly fastened the liability on the owner of the vehicle, but wrongly directed the Insurance Company to pay the compensation. Hence, this Court is inclined to set aside the judgment and decree of the Tribunal made in M.C.O.P.No.48 of 2012, dated 19.03.2014, on the file of the Motor Accident Claims Tribunal, (Principal District Court), Ariyalur and hereby completely exonerates the Insurance Company from paying the compensation. Accordingly, the second respondent/owner of the vehicle is directed to pay the compensation.

8. In the result, the Civil Miscellaneous appeal is allowed. The second respondent/owner of the vehicle is directed to deposit the award amount along with interest within a period of six weeks from the date of receipt of a copy of this judgment to the credit of MCOP.No.48 of 2012. On such deposit being made before the Trial Court, the first respondent/claimant is permitted to withdraw the entire amount along with interest, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sbn

To

1.Motor Accidents Claims Tribunal,
Principal District Court,
Ariyalur.

+lcc to Mrs.R.Poornima, Advocate SR.No. 102729

C.M.A.No.2252 of 2014
and

M.P.No.01 of 2014

A.SK(21.04.2021)



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