BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.(MD)No.21 of 2019
and
C.M.P.(MD)No.248 of 2019

ICIC Lombard General Insurance Co., ltd.,
Through its Branch Manager,
Office at A.A.Main Road,
Opp.Mathi Theatre,
Loyala Institute Buildings,
Gnanaolipuram, Maudrai. ... Appellant / 2nd Respondent

Vs.

1.D.Chandran ... 1st Respondent / Petitioner
2.V.Ganesan ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 03.12.2010 made in MCOP No.466 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court-I/Addl. District Judge), Madurai and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.Jeganathan
for M/s.Veera Associates

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the order of the tribunal in M.C.O.P.No.466 of 2009 dated 03.12.2010 passed by the Motor Accident Claims Tribunal (Fast Track Court-I/Addl. District Judge), Madurai.

2.The claim application has been made by the 1st respondent claiming a sum of Rs.5,00,000/- as compensation for the death of one Ranjithkumar @ Vishal, who travelled as a loadman in the second respondent's mini door van bearing registration No.TN 59 U 6739 on 22.08.2008. The accident occurred on 22.08.2008.

3. The insurance company has contended that the driver of the second respondent has no valid driving license at the time of accident. He also contended that the accident was not taken place due to the rash and negligent driving on the part of the driver and also the claim made by the claimants is excessive in the absence of any proof of the occupation and income of the deceased. Other averment made in the counter statements are that four persons were travelled in the said vehicle against the policy condition of the

appellant. Hence, he sought for dismissal of the claim statement.

4. The tribunal after analyzing the document and evidence placed before it, has given a finding that the negligence is on the part of the driver of the first respondent vehicle. The discussion was made whether the deceased was in the vehicle as a loadman in the second respondent vehicle at the time of accident and the tribunal has also given a finding that the deceased travelled as a load man in the said vehicle, which was insured with the appellant insurance company / second respondent, who is liable to pay the compensation. Considering all the facts and circumstances of the case and also considering the income of the deceased, the tribunal has awarded a sum of Rs.3,90,000/- as compensation.

5. Aggrieved against the said liability and also the award, the insurance company has preferred the present appeal. In the grounds of appeal, the appellant has stated that the tribunal has not considered the seating capacity of the vehicle involved in the accident and also fact that the insurance covers the risk of only two persons but at the time of accident four persons had travelled in the said vehicle. Hence, there is a violation of policy condition and hence, the appellant insurance company is not liable to the other grounds raised in the claim petitio. He also pointed out that at the time of accident the deceased had travelled in the said vehicle as an unauthorised passenger and it is not covered with the policy. Hence, the finding of the tribunal considering the deceased as loadman is also very much objected by the appellants / Insurance company.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. On a perusal of the evidence and the documents placed before the tribunal, it is found that that the FIR and the charge sheet are against the driver of the first respondent vehicle. Further there is no contradictory evidence placed by the appellant / Insurance Company to prove that there were four persons travelled in the said vehicle at the time of accident. Further, there are no contrary evidence to prove that the deceased was not the loadman at the time of accident. Hence, considering these aspects by way of evidence, the tribunal has given a finding that the deceased as loadman had travelled in the vehicle at the time of accident.

8. Further when only one person is sustained injury in the accident, there is no violation of policy condition and hence, the Insurance Company is liable to pay the compensation, when the said vehicle is insured with the appellant / Insurance Company. It is contended by the learned counsel for the petitioner that the deceased was only 32 years at the time of accident and as a loadman he was earning Rs.4,500/-, whereas, while determining the compensation the tribunal has taken the income only as Rs.3,000/- per month without considering the age of the deceased and also his occupation 'loadman'.

9. Considering all the facts and circumstances of the case, this Court is of the view that the sum awarded by the tribunal is very much reasonable and not on the higher side and the award passed by the tribunal needs no interference. In view of the above, the order passed by the tribunal is hereby confirmed and this civil miscellaneous appeal is dismissed. It is submitted that the appellant / Insurance Company has deposited the entire sum awarded by the tribunal. Accordingly, the claimant is permitted to withdraw the award amount without filing any formal application before the tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To
The Additional District Judge,
The Motor Accident Claims Tribunal,
(Fast Track Court-I/),
Madurai.
Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.2copies

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-45203[F] dated 06/02/2019)
+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-45510[F] dated 07/02/2019)

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