BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD).Nos. 486 and 487 of 2013 and
M.P(MD).No. 1 of 2013 in CMA(MD).No. 486 of 2013

United India Insurance Company Limited,
rep. by its Branch Manager,
366, Rajapalayam Road,
Opp. To State Bank of India,
Sankaran Koil. ... Appellant in both CMAs

Vs.

1. Gowar John @ Praveen .. 1st Respondent in CMA(MD).No.487 of 2013

1. Poosairaj .. 1st Respondent in CMA(MD).No. 486 of 2013

2. Murugaiah Pandian
3.Ramesh
4.National Insurance Company Limited,
rep. by its Zonal Manager,
37-C, S.N.High Road,
Tirunelveli. .. Respondents 2 to 4 in both CMAs

Common PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.04.2019 made in common Judgment in MCOP.Nos.1531 of 2006 and 1013 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, FTC No.II, Tirunelveli.

For Appellant in both CMAs : Mr.N. Murugesan
For R1 & R3 : No appearance
For R2 in both CMAs : Mr.S.T.Sasitharan Tamil Kani
For R4 in both CMAs : Mr.R.Srinivasan

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the Award, dated 24.04.2019 made in common Judgment in MCOP.Nos.1531 of 2006 and 1013 of 2007, on the file of the Motor Accidents Claims

Tribunal, Additional District Court, FTC No.II, Tirunelveli.

2. Both the Civil Miscellaneous Appeals are filed challenging the liability fixed by the Tribunal against the owner of the Tractor / insured vehicle.

3. According to the appellant, there was no licence for the driver of the Tractor at the time of accident. The policy was issued to the Tractor only on the condition that the Tractor should be used for agricultural purpose. At the time of usage of the Tractor for the agricultural purpose, if any accident occurred, then only the policy will be covered. But, according to the appellant / Insurance Company, in the present case, the Tractor was used for the commercial purpose at the time of accident to carry iron poles. Therefore, he contended that as this is a violation of Policy condition, the appellant / Insurance Company is not liable to pay compensation awarded by the Tribunal. The Tribunal has not at all considered all these facts and without application of mind fixed the liability against the owner of the Tractor as well as the appellant / Insurance Company to pay the compensation jointly and severally. Therefore, he contended that the appellant / Insurance Company may be exonerated from the payment of compensation.

4. Though notice was served none appeared for the first respondents / claimants in both the appeals.

5. The learned counsel appearing for the 2nd respondent / owner of the vehicle would contend that the vehicle was used only for the agricultural purpose and the accident occurred when the vehicle was carrying the iron poles for putting up fence in the land. After going through the records, the Tribunal has rightly held that the appellant has not proved that the the driver of the vehicle had no valid driving licence at the time of accident and the vehicle was used for commercial purpose. Thus, he prayed for dismissal of these appeals.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. On perusal of the documents and pleadings and deposition, it appears that the appellant had not proved the contention that the driver did not have any driving licence at the time of accident. The Court below has rightly come to the conclusion that in order to prove that the driver has no valid licence to drive the Tractor at the time of accident, the appellant failed to examine any witness. Further, the Court below held that the vehicle was used only for the agricultural purpose. Though the appellant contended that the vehicle was used only for commercial purpose, the said averment has not been proved by let in any evidence.

8. Further, DW.1 / RTO has categorically admitted in his cross examination that there is no document available in order to substantiate the contention that vehicle was used only for commercial purpose at the time of accident. Therefore, in these circumstances only the Court below has come to the conclusion that the accident occurred while using the Tractor only for the purpose of agricultural and this Court does not find any infirmity in the Award passed by the Court below. Accordingly, the Award passed by the Tribunal is confirmed.

9. In the result, this Civil Miscellaneous Appeals are dismissed.

10. It is reported by the appellant / Insurance Company that they have already deposited the entire award amount before the Tribunal. The first respondent / claimant in the both the Civil Miscellaneous Appeals are permitted to withdraw the entire award amount along with accrued interest and costs by filing necessary application before the Tribunal.

11. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

trp
To

The Judge,
Motor Accidents Claims Tribunal,
Additional District Court, FTC No.II, Tirunelveli.

+1CC TO MR.K.PRABHU, Advocate Sr. No. 90505
+2CC TO MR.R.SRINIVASAN, Advocate Sr. No. 90457 & 90458

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