IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1068 of 2006
and
C.M.P.No.4438 of 2006

The Branch Manager
M/s.National Insurance Company Ltd.
74A, Paramathi road
Namakkal. ... Appellant/2nd Respondent

Vs.

1.A.Sekar ..1st Respondent/Petitioner
2.G.Pushparani ..2nd Respondent/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.10.2005 made in M.C.O.P.No.858 of 2002 (earlier M.C.O.P.No.782 of 2001 on the file of Sub Court, Namakkal) on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mrs.N.B.Surekha

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 17.10.2005 made in M.C.O.P.No.858 of 2002 (earlier M.C.O.P.No.782 of 2001 on the file of Sub Court, Namakkal) on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.858 of 2002 (earlier M.C.O.P.No.782 of 2001 on the file of Sub Court, Namakkal) on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. The 1st respondent filed the said claim petition claiming a sum of

Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 24.06.2001.

3.According to the 1st respondent, on the date of accident, i.e., on 24.06.2001 at about 5.00 p.m., while the 1st respondent was travelling as a cleaner in a goods auto belonging to the 2nd respondent from Mohanur to Namakkal, the driver of the auto drove the same in a rash and negligent manner, applied sudden brake and the auto after hitting two persons, who stood in the bus stop, capsized and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the 2nd respondent and appellant/Insurance Company.

4.The 2nd respondent, owner of the auto, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the alleged date of accident was on 24.06.2001 at about 5.00 p.m. but F.I.R. was registered on 25.06.2001 at about 1.00 p.m. only. The seating capacity of the auto is only one and the 2nd respondent has violated the permit and policy conditions. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The appellant has also denied the age, avocation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.The appellant/Insurance Company filed additional counter statement and stated that the 1st respondent travelled in the goods vehicle as an unauthorised passenger. Therefore, the 2nd respondent alone is liable to pay compensation to the 1st respondent.

7.Before the Tribunal, the claimants in other M.C.O.P.Nos.856 and 857 of 2002 examined themselves as P.W.1 & P.W.2, 1st respondent examined himself as P.W.3, one Murali was examined as P.W.4, Dr.Sivalingam was examined as P.W.5 and marked nineteen documents as Exs.P1 to P19. On the side of the appellant/Insurance Company, one V.Rajamanickam, Assistant Administrative Officer of the appellant/Insurance Company, was examined as R.W.1, Dr.K.M.Ravichandran was examined as R.W.2, one Ponnusamy, Sub-Inspector of Police, was examined as R.W.3 and one Palanivel, Private investigator, was examined as R.W.4 and marked ten documents as Exs.R1 to R10. One Mr.Rajan, Inspector of Police, was examined as C.W.1, the Court witness.

8.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 auto belonging to the 2nd respondent and directed both the 2nd respondent as well as appellant/Insurance Company being insurer of the said auto to jointly and severally pay a sum of Rs.72,000/- as compensation to the 1st respondent.

9.Against the said award dated 17.10.2005 made in M.C.O.P.No.858 of 2002, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that one Anbu @ Anbarasu drove the vehicle at the time of accident merely relying on the evidence of 1st respondent as P.W.3. The 1st respondent gave a statement to the Private Investigator that at the time of accident, he only drove the vehicle and signed the statement before the investigator. The 1st respondent is the tort-feasor and hence, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. As per the Registration Certificate of the auto, only one person can travel in the vehicle. Hence, the finding of the Tribunal that the 1st respondent travelled as cleaner in the vehicle at the time of accident is not correct. No premium was collected by the appellant for the risk of cleaner. The appellant examined one Dr.K.M.Ravichandran, as R.W.2, who treated the claimants in M.C.O.P.Nos.856 and 857 of 2002 and the 1st respondent. R.W.2/Doctor in his evidence has deposed that the injured persons informed him that they travelled as gratuitous passengers in the goods carrying auto. The Tribunal relying on the evidence of R.W.2, dismissed M.C.O.P.Nos.856 and 857 of 2002 filed by other two injured persons. The Tribunal erred in considering Ex.P11/wound certificate issued to the 1st respondent by the same Doctor, R.W.2, wherein he had endorsed that the 1st respondent travelled as a gratuitous passenger and the Tribunal ought to have exonerated the appellant/Insurance Company from its liability. The learned counsel further contended that the Tribunal having rejected the evidence of the Doctor examined by the 1st respondent as P.W.5 and there are no prescriptions issued by the Doctor for medicines, erred in fixing 10% disability and awarded Rs.48,000/- & Rs.10,000/- towards permanent disability & medical expenses respectively. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

12.Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

13.It is the contention of the 1st respondent that he was working as cleaner in the goods carrying auto belonging to the 2nd respondent. On the date of accident, i.e., on 24.06.2001 at about 5.00 p.m., when the 1st respondent travelled as a cleaner in the said auto, the driver of the auto applied sudden brake and the auto capsized. Due to the same, the 1st respondent sustained injuries. In addition to the 1st respondent, two other injured persons filed claim petitions in M.C.O.P.Nos.856 & 857 of 2002 alleging that while they were standing on the bus stop near the District Collector's bungalow on the Namakkal to Mohanur main road, the driver of the goods auto belonging to the 2nd respondent dashed against them and sustained injuries. The claimant in M.C.O.P.No.857 of 2002 lodged the complaint. F.I.R. was registered against the driver of the auto belonging to the 2nd respondent. During trial, the Tribunal found that the two claimants in M.C.O.P.Nos.856 & 857 of 2002 travelled in the goods auto as passengers and they have not sustained any injuries, while they were standing in the bus stop and dismissed M.C.O.P.Nos.856 & 857 of 2002 filed by them.

14.As far as the claim petition in M.C.O.P.No.858 of 2002 filed by the 1st respondent herein is concerned, the Tribunal held that the 1st respondent travelled in the goods auto as a cleaner and the appellant having admitted that the 1st respondent was a cleaner, failed to prove that he did not travel in the goods auto at the time of accident. The appellant has taken a specific stand in the counter statement as well as during trial that in the goods auto, the seating capacity is only one for the driver and the insurance policy covers only for the driver of the vehicle, not to any other persons. To substantiate the said contention, the appellant/Insurance Company examined its official as R.W.1 and marked insurance policy as Ex.R1. The Tribunal has not considered this aspect and held that the appellant/Insurance Company has failed to prove that the 1st respondent did not travel as cleaner in the auto and directed both the 2nd respondent as well as the appellant to jointly and severally pay compensation to the 1st respondent. The said reasoning is erroneous. Even if the 1st respondent travelled as cleaner in the auto, the appellant is not liable to pay compensation for the injuries sustained by the 1st respondent as the policy issued by the appellant covers driver of the auto alone. The 2nd respondent, owner of the vehicle, alone is liable to pay compensation to the 1st respondent. For the above reason, the award of the Tribunal directing the appellant/Insurance Company to pay compensation to the 1st respondent is liable to be set aside and it is accordingly set aside. The 2nd respondent, owner of the auto, alone is directed to pay compensation to the 1st respondent.

15.As far as quantum of compensation is concerned, the Tribunal after considering both oral and documentary evidence let in by both the parties, awarded compensation to the 1st respondent, which is not excessive and the same does not warrant any interference by this Court.

16. In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.72,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent, owner of the auto, is directed to deposit the entire award amount along 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. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the award amount lying in the deposit to the credit of M.C.O.P.No.858 of 2002 on the file of the Principal District Court, Namakkal, if the entire award amount has already been deposited by them. If the appellant/Insurance Company has deposited the entire award amount and the 1st respondent has withdrawn the entire award amount, it is not open to the appellant/Insurance Company to recover the same from the 1st respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Principal District Judge
Motor Accident Claims Tribunal
Namakkal.

Copy to :
The Section Officer
VR Section
High Court
Madras.

+1 cc to M/s.N.B.Suresh, Advocate Sr.No. 20979

C.M.A.No.1068 of 2006
and
C.M.P.No.4438 of 2006

GP(CO)
RMP(26/04/2021)