IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1628 of 2013 & 569 of 2014

Muthuraman .. Appellant in C.M.A.No.1628/2013

Muthazhagan @ Muthu .. Appellant in C.M.A.No.569/2014

Vs.

1.Devendiran

2.Venkatesan

3.The Manager,
ICICI Lombard General Insurance Co. Ltd.,
140, 2nd and 3rd Floor,
Chottabai, Nungambakkam,
Chennai 600 034.

4.Divisional Manager,
United India Insurance Co. Ltd.,
46, Katpadi Road,
Vellore. .. Respondents in both C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 09.11.2012, made in M.C.O.P. Nos.763 of 2007 & 240 of 2008, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Tiruvannamalai.

(In C.M.A.No.1628 of 2013)

For Appellant : Mr.F.Terry Chellaraja
for Mrs. A. Subadra
For Respondents : M/s. M. Velmurugan (For R1)
for Mrs. Girija Velmurugan
Mrs. R.Sreevidhya (For R3)
M/s. I. Malar (For R4)

(In C.M.A.No.569 of 2014)

For Appellant : Mr. B. Jawahar
For Respondents : No appearance (For R2)
Mrs. R.Sreevidhya (For R3)
Mr. M.J. Vijayaraghavan (For R4)

COMMON JUDGMENT

These matters are heard through "Video Conferencing".

These Civil Miscellaneous Appeals have been filed against the award dated 09.11.2012, made in M.C.O.P. Nos.763 of 2007 & 240 of 2008, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Tiruvannamalai.

2.The issue involved in both the appeals are one and the same and hence, they are disposed of by this common judgment.

3.The appellant/claimant in both the appeals filed M.C.O.P. Nos.763 of 2007 & 240 of 2008, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Tiruvannamalai, claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 21.09.2007.

4.According to the appellant in both the appeals, on the date of accident, the appellant in C.M.A.No.1628 of 2013 traveled as Cleaner and appellant in C.M.A.No.569 of 2014 traveled as Loadman in the Mini Lorry bearing Registration No. TN-25-H-5167 belonging to the 1st respondent from Thiruvannamalai to Thirukovilur. While nearing Sadaikatti Village, the driver of the Mini Lorry drove the same in a rash and negligent manner and dashed against the Lorry bearing Registration No.TN-23-B-3744 belonging to the 2nd respondent which was going ahead of the Mini Lorry and caused the accident. In the accident, appellant in both the appeals sustained multiple grievous injuries and fractures. The accident occurred due to rash and negligent driving by the driver of the Mini Lorry belonging to the 1st respondent and hence, appellant in both the appeals filed the present claim petitions, claiming compensation against the respondents, 1 and 3 as owner and insurer of the Mini Lorry and respondents 2 and 4 as owner and insurer of the Lorry respectively.

5.The 2nd respondent remained exparte before the Tribunal.

6.The 1st respondent, owner of Mini Lorry, filed separate counter statements in both the claim petitions and denied all the averments made by the appellant in both the claim petitions. According to the 1st respondent, at the time of accident, the appellant in both the appeals along with one Muthuraman traveled in Mini Lorry belonging to the 1st respondent as coolie sitting in the cabin. The driver of the said Mini Lorry drove the same carefully, observing all the traffic rules. The driver of the Lorry belonging to the 2nd respondent only suddenly stopped the vehicle without any signal and hence, the driver of the Mini Lorry dashed on the Lorry and accident occurred. The 3rd respondent, insurer of the Mini Lorry is liable to indemnify the 1st respondent. In any event, the appellant in both the appeals have to prove their age, avocation and income, injuries suffered and disability sustained to claim compensation and prayed for dismissal of the claim petitions.

7.The 3rd respondent, insurer of the Mini Lorry, filed separate counter statements in both the claim petitions and denied all the averments made by the appellant in both the claim petitions. According to the 3rd respondent, at the time of accident, the 1st respondent, owner of the Mini Lorry has paid premium only for driver, owner and cleaner and not for loadmen. Hence, 3rd respondent-Insurance Company is not liable to indemnify the 1st respondent for the injuries sustained by the appellant in both the appeals who traveled as loadmen at the time of accident. The accident occurred only when driver of the Lorry belonging to the 2nd respondent suddenly stopped the vehicle. Hence, the respondents 2 and 4, as owner and insurer of the Lorry are liable to pay compensation to the appellant in both the appeals. In any event, the appellant in both the appeals have to prove their age, avocation and income, injuries suffered and disability sustained to claim compensation and prayed for dismissal of the claim petitions.

8.The 4th respondent, insurer of the Lorry, filed separate counter statements in both the claim petitions and denied all the averments made by the appellant in both the claim petitions. According to the 4th respondent, the accident occurred only due to rash and negligent driving by the driver of the Mini Lorry belonging to the 1st respondent. FIR is registered only against the driver of the Mini Lorry. Hence, the respondents 1 and 3 as owner and insurer of the Mini Lorry are liable to pay compensation to the appellant in both the appeals. In any event, the appellant in both the appeals have to prove that the driver of the Lorry belonging to the 2nd respondent possessed valid driving license, Registration Certificate, Permit and Fitness Certificate to ply the vehicle at the time of accident. The appellant in both the appeals also have to prove their age, avocation and income, injuries suffered and disability sustained to claim compensation and prayed for dismissal of the claim petitions.

9.Before the Tribunal, the appellant in both the appeals examined themselves as P.W.1, P.W.2 respectively, examined Doctor as P.W.3 and marked 16 documents as Exs.P1 to P16. The respondents examined two witnesses as R.W.1 and R.W.2 and marked 3 documents as Exs.R1 to R3.

10.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Mini Lorry belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.1,59,525/- and Rs.1,92,960/- as compensation to the appellant in both the appeals respectively. The Tribunal dismissed the claim petition as against the respondents 2 to 4.

11.Challenging the dismissal of claim petitions as against the respondents 2 to 4 and not being satisfied with the amounts awarded by the Tribunal in the common award dated 09.11.2012, made in M.C.O.P. Nos.763 of 2007 & 240 of 2008, the appellants have come out with the present Civil Miscellaneous Appeals.

12.The learned counsel appearing for the appellant in both the appeals separately contended that the Tribunal failed to see that there is no necessity to pay separate premium for employees who were employed by owner of the vehicle. As per Ex.R1, the employees are covered by policy issued by the Insurance Company. The Insurance is a contract between insured and insurer and it can go beyond basic Act policy by virtue of contract. The appellant in both the appeals proved that they are employees of 1st respondent, owner of

Mini Lorry. The 1st respondent, owner of the vehicle admitted that appellants are employees. The Tribunal erroneously held that appellants failed to prove that they are the employees under 1st respondent and they are only gratuitous passengers. The Tribunal ought to have directed the 3rd respondent-Insurance Company to pay the compensation. The learned counsel appearing for the appellant in both the appeals further contended that the appellant in both the appeals traveled in the goods vehicle as loadmen and as per proviso (C) to Section 147 (1) of the Motor Vehicles Act, the appellant in both the appeals are covered by statutory policy issued by the 3rd respondent. The third party premium paid by the 1st respondent itself is enough to cover the risk of appellant in both the appeals, though separate premium is required to be paid by the 1st respondent. Hence the appellant in both the appeals are covered under Section 147 of the Motor Vehicles Act and prayed for setting aside the award of the Tribunal dismissing the claim petition against the 3rd respondent and allowing the appeals.

13.Mr.M.Velmurugan, learned counsel appearing for the 1st respondent, owner of the vehicle Mini Lorry, contended that the appellant in both the appeals are employees of 1st respondent and on the date of accident, they traveled in the vehicle as Loadmen. The vehicle is insured with the 3rd respondent and therefore, the 3rd respondent alone is liable to pay the compensation. The accident occurred due to the negligence of the driver of the vehicle belonging to the 2nd respondent. The Tribunal erroneously dismissed the claim petition against the 3rd respondent and prayed for a direction to the 3rd respondent to pay compensation and setting aside the award directing the 1st respondent to pay the compensation.

14.Mrs.R.Sreevidhya, learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant in both the appeals traveled only as a gratuitous passengers. They have not proved that they traveled as Loadmen. The 1st respondent did not let in any evidence to prove that the appellant in both the appeals were his employees. The policy issued by the 3rd respondent is only Act policy. It covers only third party liability and not unauthorized passengers. The contention of the learned counsel appearing for the appellant in both the appeals that appellant in both the appeals are covered as per proviso (C) to Section 147 (1) of the Motor Vehicles Act is not correct. The interpretations given by the learned counsel appearing for the appellant in both the appeals is contrary to the provisions. The 1st respondent has not paid any separate additional premium for his employees or Loadmen. Only when additional premium is paid as per IMT 29 and 38, Loadman will be covered. The Tribunal considering the entire materials, rightly held that 3rd respondent-Insurance Company is not liable to pay compensation and prayed for dismissal of both the appeals.

15.Mr.M.J.Vijayaragavan, learned counsel appearing for the 4th respondent-Insurance Company in C.M.A.No.569 of 2014 and Mrs.I.Malar, learned counsel appearing for the 4th respondent-Insurance Company in C.M.A.No.1628 of 2013 separately submitted that the claim petitions were dismissed against the respondents 2 and 4 – owner and insurer of the Lorry. Hence, no relief is sought against the respondents 2 and 4 and prayed for dismissal of both the appeals against the respondents 2 and 4.

16.Though notice has been served on the 2nd respondent in C.M.A.No.569 of 2014 and his name is printed in the cause list, there is no representation for him either in person or through counsel.

17.Heard the learned counsel appearing for the appellant in both the appeals, respondents 1, 3 as well as 4 in C.M.A.No.569 of 2014 and respondents 3 and 4 in C.M.A.No.1629 of 2013 and perused the materials available on record.

18.From the materials on record, it is seen that it is the contention of the appellant in both the appeals that they were employees of the 1st respondent as Coolie and Cleaner and on the date of accident, they traveled in the Mini Lorry as employees of the 1st respondent. The accident occurred due to rash and negligent driving by the driver of the Mini Lorry belonging to the 1st respondent. The appellant in both the appeals sustained injuries in the accident. They claimed compensation from the respondents 1 and 3 as owner and insurer of the Mini Lorry and respondents 2 and 4 owner and insurer of other Lorry.

19.The 1st respondent owner of the Mini Lorry filed separate counter statements, stating that the appellant in both the appeals and other persons traveled in the Mini Lorry as Coolies sitting in the cabin. The 1st respondent did not appear before the Tribunal and give evidence to support his case. It is the case of the 3rd respondent-insurer of Mini Lorry that insurance policy issued by them does not cover the liability of employees of 1st respondent and appellant in both the appeals and another person traveled as unauthorized passengers. The appellant in both the appeals, as P.W.1 and P.W.2, deposed that they traveled as Coolie of 1st respondent. The 3rd respondent examined R.W.1 and R.W.2 and marked policy as Ex.R1. The Tribunal considering Ex.R1, found that no premium was paid for liability of the Coolies of 1st respondent. The Tribunal extracted the details of premium paid by the 1st respondent for the liability of third party, driver and personal accident coverage for owner and driver. No other premium was paid to cover the liability of workmen of 1st respondent like appellant in both the appeals. In view of the above materials, the Tribunal has held that 3rd respondent is not liable to pay compensation to the appellant in both the appeals. The contention of the learned counsel appearing for the appellant in both the appeals that by contract, basic policy can be extended and in any event, the appellant in both the appeals are covered as per the proviso to Section 147 (1) (C) of the Motor Vehicles Act, is not acceptable. Unless owner pays additional premium for his employees like appellant in both the appeals, the policy issued by the insurer under Section 147 of the Motor Vehicles Act will not cover the employees like appellant in both the appeals. The policy issued by insurer under Section 147 of the Motor Vehicles Act covers only the liability of the third parties and liability of owner and his authorized representatives traveling in the goods vehicle. Further, the 1st respondent in the counter statements has stated that appellant in both the appeals are his employees and traveled in the Mini Lorry as Loadmen. But, he did not appear before the Tribunal during trial and did not state on oath that appellant in both the appeals are his employees. In view of the same, the present contention of the learned counsel appearing for the 1st respondent that appellant in both the appeals are employees of 1st respondent is not acceptable as there is no materials to substantiate the said contention. Only when it is proved that the appellant in both the appeals are employees of the 1st respondent by letting in evidence, the proviso (C) to Section 147 of the Motor Vehicles Act will be applicable.

20.The appellant in both the appeals also have not placed any materials to show that they are the loadmen of 1st respondent and 1st respondent has paid additional premium to cover liability of his loadmen. In view of the same, the contention of the learned counsel appearing for the 3rd respondent that appellant in both the appeals are not loadmen, Coolie and Cleaner of the 1st respondent and they are only the unauthorized passengers, are acceptable. The interpretation of the 1st respondent that appellants are covered by proviso (C) to Section 147 of the Motor Vehicles Act is without merits as appellant in both the appeals have not proved that they traveled as loadmen of the 1st respondent in the Mini Lorry and accident occurred during and in the course of employment. There is no error in the award of the Tribunal directing 1st respondent to pay compensation to the appellant in both the appeals.

21.As far as the quantum of compensation is concerned, the Tribunal considering all the materials on record in proper perspective, awarded compensation under different heads, which are not meagre. There is no error in the award of the Tribunal warranting interference by this Court.

22.For the above reason, both the appeals are dismissed and the amount of Rs.1,59,525/- and Rs.1,92,960/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 1st respondent is directed to pay the award amount along with interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos.763 of 2007 & 240 of 2008 respectively. On such deposit, the appellant in both the appeals are permitted to withdraw their respective award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

21.12.2020

Index : Yes
gsa

To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruvannamalai.

2.The Section Officer,
V.R Section,
High Court, Madras.

V.M.VELUMANI, J.,

gsa

C.M.A.Nos.1628 of 2013 & 569 of 2014

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