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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1639 of 2013

P. Thangaraj ...Appellant / Claimant

Vs.

1.P. Shanmugam @ Rajendran

2.K.P. Somasundaram

3.The National Insurance Co. Ltd.,
No.403, Mettur Main Road,
Near Munsif Court, Bhavani Town, Bhavani Taluk,
Erode District. ...Respondents / Respondents

(R1 & R2 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2007, made in M.C.O.P. No.94 of 2007, on the file of the Fast Track Court No.4, (Motor Accident Claims Tribunal) Bhavani.

For Appellant : Mr. M. Lokesh
for M/s. Ma.P.Thangavel

For Respondents : Mr. S. Vadivel (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the judgment and decree dated 31.10.2007, made in M.C.O.P. No.94 of 2007, on the file of the Fast Track Court No.4, (Motor Accident Claims Tribunal) Bhavani.

2.The appellant-claimant filed M.C.O.P. No.94 of 2007, on the file of the Fast Track Court No.4, (Motor Accident Claims Tribunal) Bhavani, claiming a sum of Rs.4,00,000/- as



compensation for the injuries sustained by him in the accident that took place on 14.07.2005.

3. According to the appellant, on the date of accident, he was traveling along with his goods in a Minidor Tempo bearing Registration No. TN-36-E-7358, belonging to the 2nd respondent and driven by the 1st respondent. At about 11.45 a.m, on Perundurai - Kovai N.H.47 main road, near Komuki Spinning Mill, the 1st respondent drove the vehicle in a rash and negligent manner, as a result of which, the Minidor got capsized. The accident occurred due to rash and negligent driving by the 1st respondent, driver of the Minidor Tempo. In the accident the appellant suffered multiple injuries and fracture. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondents as driver, owner and insurer of the said Minidor Tempo.

4. The respondents 1 and 2 remained exparte before the Tribunal.

5. The 3rd respondent - Insurance Company filed counter statement and denied all the averments made by the appellant. The 3rd respondent denied the genuineness of the accident, as the alleged accident is said to have occurred on 14.07.2005, whereas the FIR was registered only on 21.07.2005, after a delay of 7 days. The Motor Vehicles Inspector has inspected the vehicle only on 25.07.2005. According to the 3rd respondent, the Minidor Tempo is a non-commercial vehicle and it cannot be used to carry passengers/persons. The Minidor Tempo can be plied without permit, unlike commercial vehicles which requires Commercial Permit issued by the Regional Transport Officer. The 2nd respondent, owner of the Minidor Tempo has violated the policy conditions by permitting 5 persons to travel in the vehicle, without obtaining permit from the Competent Authority to use the vehicle for commercial purpose. Hence, the 3rd respondent is not liable to indemnify the 2nd respondent for the injured in the accident. The accident did not occur due to rash and negligent driving by the 1st respondent/driver of the Minidor Tempo. The 2nd respondent was not the owner of the vehicle at the time of accident. Hence, the petition is bad for mis-joinder of necessary parties to the proceedings. In any event, the appellant has to prove his age, income and avocation, injuries sustained in the accident, treatment taken for the same, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1, examined one Doctor as P.W.2 and marked 13 documents as Exs.P1 to P13. The respondents examined one Babu as R.W.1 and



marked 3 documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Minidor Tempo belonging to the 2nd respondent and directed the respondents 1 and 2 to pay a sum of Rs.83,090/- as compensation to the appellant and dismissed the claim petition as against the 3rd respondent-Insurance Company for violation of policy condition by the 2nd respondent.

8.Challenging the portion of the award dismissing the claim petition as against the 3rd respondent-Insurance Company and not being satisfied with the amounts awarded by the Tribunal in the award dated 31.10.2007, made in M.C.O.P. No.94 of 2007, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the appellant travelled in the Minidor Tempo along with welding machine, driven by the 1st respondent. The Tribunal having held that the accident occurred only due to rash and negligent driving by the 1st respondent, erroneously dismissed the claim petition against the 3rd respondent-Insurance Company on the ground that the 3rd respondent is not liable to pay compensation to the persons travelling in the Minidor vehicle. In support of his contentions, the learned counsel appearing for the appellant relied on the judgments reported in 2019 (2) TN MAC 188 [Manjula and others Vs. M. Sakthivel and others] and 2019 (2) TN MAC 271 [Ravi Sundar Vs. C. Ravi and others]. The learned counsel appearing for the appellant further contended that the appellant was working as Welder and was earning a sum of Rs.3,500/- per month. Due to the injuries sustained in the accident, his work is affected. The Tribunal ought to have applied the multiplier method. The appellant has taken treatment as in-patient for 6 days. The Tribunal failed to award any amount towards loss of income and loss of amenities. The amounts awarded by the Tribunal towards attendant charges, transportation and medical expenses are meagre and prayed for enhancement of the compensation.

10.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company submitted that the offending vehicle is a non-commercial vehicle and it should not be used for commercial purposes. The Minidor Tempo can be plied without permit. Ex.P8 - Trip Sheets filed by the appellant shows that the vehicle is used only for carrying passengers. In view of the same, the 3rd respondent-Insurance Company is not liable to indemnify the 2nd respondent, owner of the Minidor Tempo. The Tribunal considering the same, has dismissed the claim petition



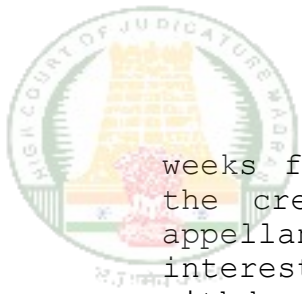
against the 3rd respondent and prayed for dismissal of the appeal against the 2nd respondent.

11. Heard learned counsel appearing for the appellant as well as the 3rd respondent-Insurance Company and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the appellant that he was traveling along with welding machine in the Minidor Tempo belonging to the 2nd respondent and accident has occurred due to rash and negligent driving by the 1st respondent, driver of the vehicle. The Tribunal has held that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of the Minidor Tempo. It is the admitted case of the appellant that he traveled in the Minidor Tempo sitting along with the 1st respondent/driver and one Govindaraj in the front and two persons traveled in the backside along with welding machine. The Minidor Tempo is a non-commercial vehicle. A reading of Ex.P8 - Trip sheets shows that the vehicle is used only for carrying passengers. The passengers cannot travel with their goods. Further, the seating capacity of Minidor Tempo is only for the driver and no other person can sit in the front along with driver sharing the seat of the driver. In the present case, the appellant himself has admitted that he sat along with driver and one Govindaraj in the front. In view of the above materials, owner of the vehicle has violated the policy conditions by permitting the appellant and one Govindaraj to sit in the front along with driver in the Minidor Tempo. Considering these admitted facts, the Tribunal has rightly held that the 3rd respondent-Insurance Company is not liable to pay any compensation to the appellant. The two judgments relied on by the learned counsel appearing for the appellant are not applicable to the facts of the present case, as it relates to the persons traveling in the Commercial Vehicle along with goods.

13. As far as the quantum of compensation is concerned, the Tribunal considering the evidence of the appellant and P.W.2 - Doctor, nature of injuries suffered by the appellant and treatment taken, has awarded compensation which are not meagre. The appellant has not made out any case for enhancement of the compensation.

14. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.83,090/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondents 1 and 2 are directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of six



weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.94 of 2007. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Judge,
Fast Track Court No.4,
(Motor Accident Claims Tribunal),
Bhavani, Erode District.

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

+1cc to M/s.S.Vadivel, Advocate Sr.No. 35692

C.M.A.No.1639 of 2013

CP(CO)
SB(11/08/2021)