

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.152 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

The National Insurance Company Ltd.,
Divisional Office II,
11, Ramakrishna Road,
Salem - 7. Appellant/2nd Respondent

Vs.

1. Raja
2. Megala
3. Chinnusamy ... Respondents/Claimants/Respondents 1 to 3
4. The National Insurance Company Ltd.,
Divisional Office I,
LRN Colony,
Sarada College Main Road,
Salem - 7. Respondent/4th Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and Decree in M.C.O.P.No.829 of 2005, dated 28.03.2011, on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No.I), Salem.

For Appellant : Mr.D.Baskaran
For Respondents :
For R1 & R2 : No appearance
For R3 & R4 : Given up

JUDGMENT

With the consent, this appeal is taken up for final disposal. The appellant Insurance Company is the appellant and it is aggrieved by the impugned Judgment and Decree dated 28.03.2011 passed by the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.I, Salem) in M.C.O.P.No.829 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.19,220/- together with interest at 7.5% per annum from the date of filing of the claim petition, till the date of deposit, to the 1st respondent/claimant.

3. The main ground on which in this appeal has filed is that, the policy does not cover the liability for a gratuitous passenger considering the fact that the vehicle did not have adequate seating capacity.

4. It is submitted that the Tribunal ought to have followed the Judgment of the Hon'ble Supreme Court in the case of United India Insurance Company Vs Suresh K.K. & another, 2008 ACJ 1741 and Judgment of this Hon'ble Court in CMA No.2919 of 2007 in the case of the National Insurance Company Limited, Gopichettipalayam Vs Gurusamy & 2 others.

5. The appellant Insurance Company also drew my attention to the decision of this Court rendered C.M.A.Nos.2515 to 2517 of 2016 rendered on 14.12.2018 arising out of the same accident, wherein, the appeal filed by the other claimants who travelled in the same vehicle was rejected. The Tribunal had directed the owner of the vehicle to pay compensation directly. In the aforesaid case, in paragraph (8), the Court in C.M.A.Nos.2515 to 2517 of 2006 has held as follows:-

"8. The learned counsel appearing for the respondents 2 and 4 has contended that the policy taken by the 1st respondent is only Act policy and she has insured the vehicle for 3rd party claim and paid premium to cover driver and only one employee. One of the injured claimant viz., Raja filed M.C.O.P.No.829 of 2005 on the file of the Fast Track Court No.I, Salem and the Tribunal by the award dated 28.03.2011, held that the driver of the tractor trailer belonging to the 3rd respondent and insured with the 4th respondent is not responsible for the accident and therefore, the Tribunal has rightly dismissed the claim petition against the respondents 2 to 4. In view of the said award, the 2nd respondent is not liable to pay any compensation to the claimants and prayed for dismissal of the appeals."

Since the vehicle covers the liability for one passenger. I do not find any merits in the present appeal.

6. It is noticed that the owner of the insured vehicle had paid premium of Rs.25/- to cover the risk of the driver apart from the third party. In my view, since the first respondent/claimant was employed as an employee and since others who travelled had been held be gratuitous passengers, the

Judgment of the Tribunal holding Insurance Company liable is to be upheld.

7. If the amount of compensation awarded by the Tribunal has not been deposited by the appellant Insurance Company, it is directed to deposit the same together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of the copy of this Judgment.

8. On such deposit, the first respondent/claimant is entitled to withdraw his share together with interest as directed by the Tribunal, by filing suitable application before Tribunal, if the award amount has not been already withdrawn by him as per the impugned Judgment and Decree.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.I, Salem.

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and

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rsv[co]
srg 02/02/2021

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