

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1689 of 2013

M/s.National Insurance Co.Ltd.

2nd floor, 81-D, Cheety street

Opp. Bus stand

Tiruchengode.

.. Appellant / 2n Respondent

Vs

1.Arul @ Arunkumar

2.M.Shanmugam

.. Respondents/

Petitioner/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2011 made in M.C.O.P.No.410 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri, Salem District.

For Appellant : Mr.J.Chandran

For R1 : Mr.C.Kulanthaivel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award dated 27.09.2011 made in M.C.O.P.No.410 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri, Salem District.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.410 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri, Salem District. The 1st respondent filed the said claim petitions claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by him in the accident that took place on 22.04.2009.

3.According to the 1st respondent on the date of accident, i.e., on 22.04.2009 at about 12.30 p.m., while the 1st respondent was travelling as helper in the lorry belonging to the 2nd respondent, the driver of the lorry drove the same in a

rash and negligent manner, capsized and caused the accident. Due to the said impact, the 1st respondent fell down on the ground and sustained multiple injuries all over the body. Therefore, he filed the above claim petition seeking compensation against the 2nd respondent and appellant/Insurance Company.

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

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that at the time of accident, seven persons have travelled in the lorry, while the permitted seating capacity of the lorry is only three in cabin, which is in violation of 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.Before the Tribunal, claimants in M.C.O.P.Nos.364 & 366 of 2009 were examined as P.W.1 & P.W.2, the 1st respondent examined himself as P.W.3 & Dr.R.Krishnasamy was examined as P.W.4. 20 documents were marked as Exs.P1 to P20. On the side of the appellant/Insurance Company, one Devarajan, Administrative Officer of the appellant was examined as R.W.1 and marked two documents as Exs.R1 and R2.

7.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 lorry belonging to the 2nd respondent and directed both the 2nd respondent as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.2,50,000/- as compensation to the 1st respondent.

8.Against the said award dated 27.09.2011 made in M.C.O.P.No.410 of 2009, the present appeal has been filed by the appellant/Insurance Company.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider the averments made in the counter statement filed by them that the 2nd respondent, owner of the lorry permitted seven persons apart from driver and cleaner to travel in the vehicle against the permitted seating capacity of three persons. The Tribunal ought to have held that owner of the lorry alone is liable to pay

compensation as he violated permit and policy conditions. The Tribunal ought to have considered the evidence of R.W.1 and exonerated the appellant from its liability. The Tribunal failed to consider that the 2nd respondent, the owner or driver of the lorry not stepped into the witness box to give evidence. The Tribunal ought to have held that the appellant discharged its burden and owner of the lorry alone is liable to pay compensation. As per the Registration Certificate and insurance policy, the rig lorry assistant was not covered and the 1st respondent travelled in the lorry only as unauthorised passenger. The Tribunal ought to have disbelieved the evidence of P.W.4/Doctor, who has assessed the disability of the 1st respondent as 50% for fracture of hip bone and fracture of wrist. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent is a cleaner and he is not gratuitous passenger. The appellant is liable to pay compensation to the 1st respondent as the policy issued by the appellant covers the claim made by the 1st respondent. The 1st respondent examined himself as P.W.3 and deposed to that effect. The evidence of R.W.1, who is an official of the appellant/Insurance Company, is not acceptable as the appellant has not proved that seven persons travelled in the lorry at the time of accident. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent and perused all the materials available on record.

12. It is the contention of the 1st respondent that at the time of accident, he travelled in the lorry belonging to the 2nd respondent as a cleaner. To substantiate the said contention, the 1st respondent examined himself as P.W.3. On the other hand, it is the contention of the appellant that at the time of accident, seven persons travelled in the lorry. The appellant examined R.W.1, officer of the appellant/Insurance Company, who is not an eye-witness to the accident. The appellant has not examined any independent eye-witness and produced any document to show that the accident occurred only due to seven persons travelled in the lorry in violation of permit and policy conditions. The Tribunal considering the evidence of 1st respondent as P.W.3, P.W.1 & P.W.2, contents of F.I.R. and in the absence of any contra evidence by the appellant, held that the accident has occurred only due to rash and negligent driving

by the driver of the lorry belonging to the 2nd respondent and the appellant as insurer is liable to pay compensation to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

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

14.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,50,000/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. Both the 2nd respondent as well as the appellant/Insurance Company are directed to jointly and severally deposit the entire amount awarded by the Tribunal 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 amount awarded by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Sankari, Salem District.

2.The Section Officer,
VR Section, High Court, Chennai.

1 cc to MR.C. Kulanthaivel, Advocate, Sr. 21265
1 cc to MR.J. Chandran, Advocate, Sr. 21086

C.M.A.No.1689 of 2013

GJ (CO)
kk 5/1