

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2020

PRONOUNCED ON : 17.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1724 of 2015

(Heard through video conferencing)

Mahasamy

Appellant

Vs

1.Minor Prakash
rep. By his father and natural
guardian Rajendran,
4/252-A, Vengamedu Colony,
Puthupalayam,
Avinashi Taluk,
Tiruppur District.

2.M/s.Bajaj Allianz General Insurance
Co. Ltd.,
No.11, Peoples Park, 3rd Floor,
Govt. Arts College Road,
Coimbatore 641 018.

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the
Motor Vehicles Act, 1988 against the award and decree dated 16.07.2013 passed

in M.C.O.P.No.32 of 2008 by the Motor Accidents Claims Tribunal (II Additional District Court), Tiruppur.

For Appellant :Mr.K.Subburam

For R.1 : Mr.S.Kaithamalai Kumaran

For R.2 : Mr.S.Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the vehicle owner who is mulcted with liability of paying the compensation of Rs.1,09,590/- to the claimant who sustained injury in the motor accident caused by the appellant vehicle.

2.On 02.12.2007, at about 3.30 pm, the vehicle owned and driven by the appellant carrying the claimant and others, in a rash and negligen manner grazed on the electrical post, in which, the claimant sustained fracture injuries on his right brachial artery and on right cubital fossa. At the time of accident, the claimant was 9 years old and studied IV standard. The appellant herein has carried the victim along with other children to attend a political meeting. On the way, the accident has occurred. Based on the complaint given by the father of the victim, a case was registered against the appellant.

3.The victim boy was admitted in P.S.G Hospital, Coimbatore and a sum of Rs.1,75,000/- was spent for his medical expenses. Hence, compensation of Rs.3,00,000/- was sought before the Tribunal. The father of the victim and two others were examined in support of the claimant. P.W.1 is the defacto complainant and father of the minor claimant; P.W.2 is an eye witness to the accident and P.W.3 is the Doctor who issued Wound Certificate to the victim. Totally, nine exhibits were marked on the side of the claimant. On behalf of the Insurance Company, one witness was examined and four exhibits were marked.

4.The appellant herein remained absent and set exparte before the Tribunal. The Insurance Company entered appearance through its counsel and filed counter affidavit wherein, it was alleged that the appellant vehicle has violated the policy condition. The three wheeler Auto bearing registration No.TN 40 Y 8069 is a commercial vehicle owned by the appellant and insured under the second respondent. It is the goods vehicle and no passengers are permitted to travel. If any person travelling in the said vehicle, they are unauthorised passengers or gratuitous passengers. Hence, the Insurance Company is not liable to indemnify those persons for whom there is no insurance coverage.

5.Pointing out that the F.I.R., has been registered after six days of delay which creates more doubt about the nature of the accident, the Insurance Company has denied their liability on the ground that it is a clear case of policy violation and therefore, they must be exonerated.

6.The Tribunal on considering the evidence, held that though the F.I.R., was filed after six days of accident, the same has been investigated by the Police and the case has been registered against the appellant for offences under Sections 279 and 337 I.P.C. During trial, P.W.2 who is the eye witness to the occurrence has also spoken about the accident.

7.The Officer of the Insurance Company who was examined as D.W.1 admits that the appellant vehicle was involved in the accident while carrying children in the commercial vehicle contrary to the policy condition. Therefore, while fixing the liability on the vehicle owner, the Tribunal considered the partial permanent disability at 24% as certified by P.W.3, in Ex.P.8. Awarded Rs.48,000/- under the head of partial permanent disability and Rs.30,000/- for pain and suffering besides Rs.31,590/- towards medical expenses. A total sum of

Rs.1,09,590/- was awarded with interest @ 7.5 % per annum from the date of petition till the date of realisation payable by the owner of the vehicle, who is the appellant herein.

8.In the appeal, it is contended by the appellant/vehicle owner that the Tribunal ought not to have foisted the liability on the owner of the vehicle since, the vehicle is duly insured under the second respondent Insurance Company. The version of the appellant is contrary to the fact that the claimant did not travel in the appellant vehicle and the injuries sustained by the victim were not due to the accident involving the appellant vehicle. The partial permanent disability fixed by P.W.3 is excessive and without basis.

9.The learned counsel for the first respondent/claimant would submit that the appellant herein in spite of notice remained absent and did not participate in the trial before the Tribunal. In the appeal, he cannot raise the grounds which are not canvassed before the Tribunal. Even otherwise, the Tribunal has considered all the facts including the delay in lodging F.I.R. Having considered Ex.P.1 - F.I.R; evidence of P.W.2, who is eye witness to the accident; Wound Certificate - Ex.P.2

and the discharge summary - Ex.P.3 issued by P.S.G Hospital, Coimbatore, the Tribunal has held that the claimant had sustained injury in the motor accident caused by the vehicle of the appellant. Therefore, the decision of the Tribunal, the Insurance does not cover gratuitous person and the appellant alone is responsible to pay compensation to the claimant, is in consonance with the law laid down by the Hon'ble Supreme Court in various cases and there is no error in the Tribunal award.

10.The points canvassed in the appeal though not canvassed by the appellant herein and remained exparte, the Tribunal has gone into those facts regarding the genuineness of complaint and the nature of the injury sustained by the victim on violation of the policy condition committed by the appellant herein.

11.R.W.1 who is an Officer of the Insurance Company had deposed that the appellant vehicle was insured under the second respondent Insurance Company; the insurance policy is Ex.R.1. At the time of accident, the insurance was in force and the vehicle is a commercial goods carrier. In the said vehicle, the claimant and the other children were carried contrary to the policy condition and while doing

so, the claimant has sustained injuries.

12.The appellant herein being the owner of the vehicle and the first respondent in the claim petition, failed to contest the case before the Tribunal. The Insurance Company sought leave of the Tribunal to contest the case on factual aspects and has succeeded that they are not liable to pay any compensation to the claimant since, there is a patent policy violation. The records indicates that few other children also travelled in the appellant vehicle. The appellant as owner cum driver has travelled at that point of time and knowingly, he has violated the policy condition and permit condition. Therefore, for carrying passenger in goods vehicles, the Insurer is not liable to indemnify the Insured / vehicle owner. The Insurance coverage is not for the unauthorised passenger / gratuitous person.

13.In view of the above finding, this Court finds no merit in the appeal preferred by the owner of the vehicle. The award passed by the Tribunal is hereby confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

17.09.2020

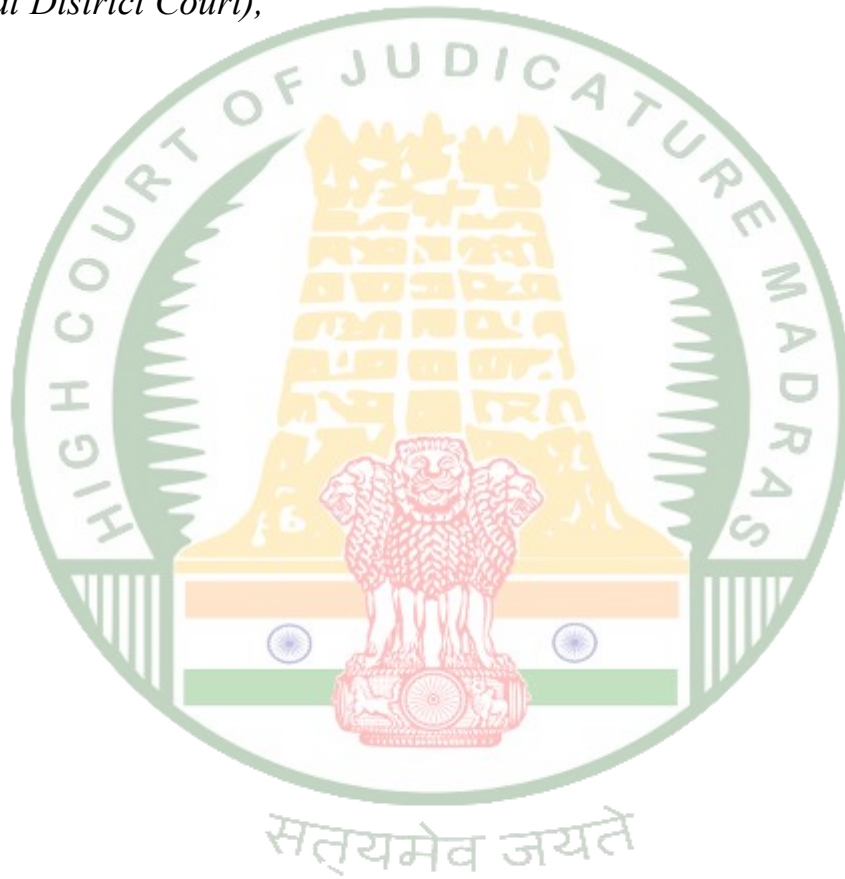
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Index: Yes/No

Speaking order/non speaking order

To

*The Motor Accidents Claims Tribunal,
(II Additional District Court),
Tiruppur.*



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G.JAYACHANDRAN.J.,

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Pre Delivery Judgment made in

C.M.A.No.1724 of 2015

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