

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2014 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

Divisional Manager,
The New India Assurance Company Limited,
42, Big Street,
Tiruvannamalai. ... Appellant/2nd Respondent

Vs.

1. Gnanaprakasham ... 1st Respondent/Petitioner

2. Ibrahim ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.450 of 2007, dated 12.08.2011, on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tiruvannamalai.

For Appellant : Mr.K.Vinod
for Mr.Elveera Ravindran

For Respondents

For R1 : Mr.F.Terry Chellaraja

For R2 : Not ready in notice

JUDGMENT

The Insurance Company is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 12.08.2011 passed by the Motor Accidents Claims Tribunal (Principal Sub Court, Tiruvannamalai) in M.C.O.P.No.450 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.98,000/- as compensation together with interest at 7.5% from 02.03.2007 till 12.08.2011. The first respondent/claimant is said to be coolie employed by the second respondent/owner of the insured vehicle. (Bajaj Tempo).

3. It is the case of the appellant that the owner of the insured vehicle namely the second respondent had failed to observe Condition No.3 of IMT (39) which is extracted hereunder:

IMT 39. Legal Liability to persons employed in connection with the operation and/or maintaining and/or loading and/or unloading of Motor Vehicles.

(For Goods Vehicle)

In consideration of the payment of an additional premium of * it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.

.....

.....

(3) the insured shall keep a record of the name of each driver, cleaner, conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at times allow the insurer to inspect such record.

4. It is further submitted that the first respondent travelled as an unauthorized person and therefore on this count also, the Tribunal erred in fixing liability on the ground that the Appellant Insurance Company had extended the insurance to the first respondent/claimant of the vehicle.

5. I have considered the arguments advanced on behalf of the appellant and the first respondent.

6. The Tribunal has categorically come to a conclusion that the first respondent/claimant travelled as an employee of the second respondent/owner of the insured Bajaj Tempo Vehicle. It has also categorically found that the first respondent travelled in the cabin at the time of accident.

7. Considering the fact that Section 147 of the Motor Vehicles Act, 1988, the responsibility of the Insurance Company cannot be absolved. The argument that the second respondent had not maintained the record containing of the name of the driver, cleaner, conductor or any person employed in the loading and/or

unloading and the amount of wages/salary and other earnings paid to such employee, is an argument which is advanced for the first time before this Court.

8. Under these circumstances, I do not find any merits in the appeal filed by the appellant Insurance Company. The Tribunal has further given a categorical finding that the first respondent travelled in the insured vehicle and was sitting in the cabin at the time of accident. Thus there is no merits in the present appeal.

9. 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.

10. On such deposit, the first respondent/claimant is entitled to withdraw the award amount together with interest as directed by the Tribunal, by filing suitable application before Tribunal.

11. With the above observation and direction, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

arb

To:

1. The Motor Accidents Claims Tribunal,
Principal Sub Court, Tiruvannamalai.

Copy to:

The Section Officer,
VR Section , High Court Madras.

+1 cc to M/s.M.Malar, Advocate Sr.No. 26211

C.M.A.No.2014 of 2012

KJ(CO)

RMP(23/03/2021)