



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2146 of 2012
and M.P. No.1 of 2012

New India Assurance Co. Ltd.,
Divisional Office,
"Premier Complex",
No.102, Yercaud Road,
Alagapuram,
Salem 16.

..Appellant/Respondent II

Vs.

1.Kullachi @ Unnamalai
2.G.Rajavel

..Respondent-1/Petitioner

(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 04.01.2012, made in M.C.O.P. No.474 of 2009, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. A. Salomi

For Respondent : Mr. P. Mani (For R1)

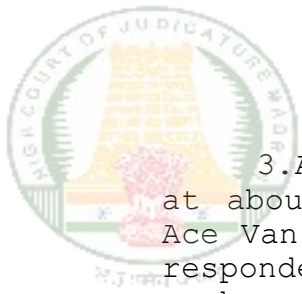
Mr. Tamil Thendralarasu (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 04.01.2012, made in M.C.O.P. No.474 of 2009, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.474 of 2009, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by her in the accident that took place on 27.07.2008.



3. According to the 1st respondent, on the date of accident, at about 4.30 a.m, when she was traveling as labourer in Tata Ace Van bearing Registration No.TN-24-D-2203 belonging to the 2nd respondent, the driver of the said vehicle drove the same in a rash and negligent manner with great speed in Erode-Kangeyam Road and dashed against the road side neem tree and caused accident. In the accident, the 1st respondent sustained grievous injuries. The accident occurred due to rash and negligent driving by the driver of the Van belonging to the 2nd respondent. The appellant and 2nd respondent as insurer and owner of the offending vehicle are liable to pay compensation.

4. The 2nd respondent remained exparte before the Tribunal.

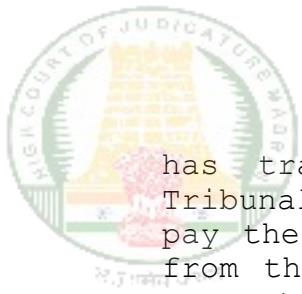
5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the 2nd respondent has violated the policy conditions by permitting more than 10 passengers to travel unauthorizedly in the goods vehicle and the driver of the said vehicle drove with great speed and dashed against the neem tree. The passengers did not carry any goods to travel as owner of the goods in the said Van. For the violation of policy conditions by the driver and owner of the Van/2nd respondent, the appellant is not liable to indemnify the 2nd respondent. In any event, the 1st respondent also has to prove her age, avocation and income, disability suffered and treatment taken to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Doctor as P.W.2 and marked 8 documents as Exs.P1 to P8. On the side of the appellant, one G. Sundararaj was examined as R.W.1 and one document was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent traveled as gratuitous passenger and directed the appellant as insurer of the vehicle to pay a sum of Rs.2,22,520/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent, owner of the vehicle.

8. Against the said award dated 04.01.2012, made in M.C.O.P. No.474 of 2009, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent traveled in the goods vehicle. The Tribunal considering the evidence of 1st respondent as P.W.1 and FIR marked as Ex.P1, held that the 1st respondent



has traveled as gratuitous passenger. Having held so, the Tribunal erred in directing the appellant-Insurance Company to pay the compensation at the first instance and recover the same from the 2nd respondent. The Tribunal erred in holding that the concept of pay and recovery is discretionary power and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 and 2 separately contended that on the date of accident, the 1st respondent traveled as labourer of the 2nd respondent and therefore, the appellant is liable to pay compensation. The learned counsel appearing for the 1st respondent contended that the 1st respondent is third party to the claim and she can not be penalized for any violation by the 2nd respondent, owner of the vehicle. The learned counsel appearing for the 2nd respondent contended that there is no violation in policy condition and the Tribunal erred in ordering pay and recovery. The Tribunal ought to have fastened the entire liability on the part of the appellant-Insurance Company and both the learned counsel appearing for the respondents 1 and 2 prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant-Insurance Company, learned counsel appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

12. It is the contention of the 1st respondent that she traveled as labourer of the 2nd respondent in the goods vehicle belonging to the 2nd respondent. She deposed as P.W.1 to that effect and marked FIR as Ex.P1. The FIR was registered based on the complaint given by one Velu, who traveled along with the 1st respondent at the time of accident. In his complaint, he has given the names of the persons who traveled in the goods vehicle. He has also stated that they were going in the vehicle to Palani to worship Lord Muruga. There is no mention of the goods being carried at the time of accident. The Tribunal considering the contents of FIR and in the absence of any material placed before the Tribunal to prove that the 1st respondent traveled along with the goods or as labourer of the 2nd respondent, did not accept the evidence of P.W.1 and held that the 1st respondent and others traveled at the time of accident only as a gratuitous passenger and exonerated the appellant from its liability to indemnify the 2nd respondent. Having held so, the Tribunal erred in directing the appellant to pay the compensation to the 1st respondent at the first instance and recover the same from the owner of the vehicle. The order of pay and recovery is erroneous. It is well settled that Insurance Company is not liable to pay any compensation to any gratuitous passenger traveling in the goods vehicle. In view of



the same, the award of the Tribunal ordering pay and recovery is liable to be set aside and it is hereby set aside.

13.As far as the quantum of compensation granted by the Tribunal is concerned, the Tribunal considering all the materials on record in proper perspective, granted compensation under different heads, which are not excessive, warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.2,22,520/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit is confirmed. The second respondent is directed to deposit the award amount along with interest and costs, 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.474 of 2009. On such deposit, the 1st respondent 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. It is made clear that if any amount is deposited by the appellant and the 1st respondent/claimant has already withdrawn the said award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. However, the appellant is at liberty to recover the same from the second respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1 CC to Mr.P. Mani, Advocate sr 34491

+1 CC to Mr.C. Ramesh Babu, advocate sr 34058.

C.M.A. No.2146 of 2012
and M.P.No.1 of 2012

VGII(CO)
SP(31/08/2021)