

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1991 of 2013
and MP.No.1 of 2013

The Divisional Manager,
M/s.National Insurance Co Ltd,
NO.19, Officer's Line, 1st floor,
Opp Lakshmi Theatre,
Vellore

... Appellant/2nd Respondent

Vs.

1.Mr.Dhandapani ...1st Respondent/Petitioner

2.Mrs.Muniammal. ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.289 of 2006 dated 04.10.2012 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Tiruvannamalai.

For Appellant : Mr.J.Chandran
For Respondents : R1 - Name printed.
No appearance.
Mr.S.Kumaradevan for R2.

J U D G M E N T

This appeal is filed by the appellant/insurance company against the judgment and decree made in MCOP.No.289 of 2006 dated 04.10.2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

2. The case of the claimant is that on 03.08.2004 at about 12.00pm near Ladavaram Koot Road, Thiruvannamalai to Polur Road, Kalasapakkam, Thiruvannamalai District, the claimant was travelling as a coolie in the van bearing Registration No.TN45 Y 9529 from Thiruvannamalai to Polur. At that time, the driver of the van drove the said van in a rash and negligent manner and dashed against the Tamarin tree, hence, the claimant sustained fracture in the left leg thigh and injuries all over the body. The claimant was taken to Government Hospital, Thiruvannamalai

and then to private hospital. Due to the said accident he is not able to do his daily routine work and not able to eke his livelihood. The second respondent is the owner of the vehicle and it was insured with the appellant/insurance company, hence, the owner and the insurer of the vehicle are jointly and severally liable to pay the compensation.

3. The insurance company filed counter inter alia stating that the van was insured for seven persons, driver and cleaner and five coolie/loadman. As per the terms and conditions of the policy cover which prohibits carrying fare paying passengers, the injured travelled in the van boarded for journey to Padavdeu along with one Parasuraman for ear boring ceremony. It is the Parasuraman who hired the vehicle and taken 32 persons whose names are clearly mentioned in the FIR. The owner of the van/second respondent knowingly allowed the vehicle on hire to Parasuraman for taking his relatives. The claimant was not travelled as coolie or owner of paddy bags, as they are not carrying any paddy bags in the van. In the FIR it is clearly mentioned that the driver of the van has committed the accident and the driver neither had valid driving licence nor sufficient experience to drive the van. The said accident cannot be covered under the conditions stipulated under the policy.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW7 and marked Ex.P1 to Ex.P15. On the side of the respondents, RW1 was examined and marked Ex.R1 and Ex.R2.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company stated that the negligence on the part of the van driver and driver dashed the van in the Tamarin tree, hence, the claimant sustained fracture and injuries all over the body. The van is meant for goods carrier, the claimants and his relatives travelled in a goods vehicle to attend the ear boring ceremony of his relative, which is in violation of rules and regulations of the policy conditions and hence the appellant is not liable to indemnify the insured.

7. The learned counsel for the first respondent/claimant submits that due to the accident the claimant was not able to do any work and not able to eke his livelihood. Further, the claimant travelled in the van as a coolie, the driver drove the van rash and negligently and dashed against the Tamarin tree. The van was insured with the appellant, hence the appellant is liable to pay the compensation to the claimant.

8. On a perusal of records, it is seen that the tribunal has wrongly fixed the compensation on the appellant/insurance company. The Tribunal ought to have disbelieved the version of the claimant as he travelled in the van as coolie. The content of the FIR clearly established that the claimant travelled in the van as one of the unauthorised travellers to attend the ear boring ceremony of his relatives. The driver of the lorry had neither effective driving licence nor sufficient experience to drive a van. The policy will cover only on seven persons (i.e, one Driver, one cleaner and five loadman/coolies). At the relevant point of time, the claimant travelled in the van as unauthorised passenger/fare paying passenger. The Tribunal wrongly come to the conclusion instead of directly fastening the liability against the owner of the vehicle, erroneously directed the appellant/insurance company to pay and recover from the owner of the van.

9. In view of the above discussion, the civil miscellaneous appeal is allowed by setting aside the judgment and decree made in MCOP.No.289 of 2006 dated 04.10.2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai. The claimant is at liberty to proceed against the owner of the vehicle for taking steps in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Tiruvannamalai.

Copy to
The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.S.Kumara Devan, Advocate Sr.4639
+1cc to Mr.J.Chandran, Advocate Sr.4809

C.M.A.No.1991 of 2013

sj[co]
srg 27/07/2020