IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020
CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2017 of 2013
and
M.P. No.1 of 2013

The Divisional Manager,
United India Insurance Company Ltd.,
J.N.Street,Puducherry. ...Appellant/2nd Respondent

vs.

1. Ayyanar ..1st Respondent/Petitioner
2. K.Sundaramoorthy ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P. No. 250 of 2009 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge) at Pondicherry, dated 30.04.2012.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.P.Veeraraghavan for R1
R2 - Served - No appearance

JUDGMENT
(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.04.2012 passed by the Motor Accidents Claims Tribunal, (III Additional District Judge) at Pondicherry in MCOP No.250 of 2009.

2. The first respondent / claimant sustained injuries on 20.10.2007 as a result of an accident caused by a vehicle, insured with the Appellant / Insurance Company. He preferred a claim before the Motor Accidents Claims Tribunal (III Additional District Judge) at Pondicherry in MCOP No.250 of 2009 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accidents Claims Tribunal (III Additional District Judge) at Pondicherry under the impugned award, directed the Appellant / Insurance Company to pay the first respondent / claimant a sum of Rs.3,28,000/- together with interests and costs as detailed hereunder :

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Heads	Amount awarded by the Tribunal (Rs.)
Compensation for mental agony, pain and sufferings	15000
Medical expenses	20000
Transport expenses to go to hospital etc	5000
Loss of income due to amputation	288000
Total	328000

4.The Appellant / Insurance company has challenged the impugned award on the ground that the first respondent / claimant was a gratuitous passenger in the insured vehicle at the time of the accident and hence they are not liable to compensate the claim of the first respondent / claimant.

5. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant / Insurance Company and Mr.P.Veeraraghavan, learned counsel for the first respondent. Despite service of notice on the second respondent, there is no appearance on his side.

6. Before the Tribunal, the first respondent / claimant has filed ten documents which were marked as Exs.P1 to P10 and two witnesses were examined on his side viz., the first respondent / claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the appellant / Insurance Company, no document was filed but one witness was examined viz., their official as RW1.

7. The contention raised in this appeal was also raised by the appellant before the Tribunal. The same was duly considered by the Tribunal. However, this Court is of the considered view that the Tribunal ought to have granted pay and recovery rights to the appellant / Insurance Company since admittedly at the time of the accident, the insured vehicle was carrying excess persons than the permissible limit.

8. The Tribunal under the impugned award has given the following reasons for rejecting the contention of the appellant in para 8 of the award which reads as follows :

> 8. The contention of learned counsel for the second respondent is that the accident had occurred only due to negligent on the part of the driver of the first respondent's vehicle. On the contrary, the

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second respondent has examined one Anbajagane, Senior assistant as RW1. But, he has not established that the petitioner was travelled in the Mini van as a passenger. On the contrary, the petitioner has established through his evidence that he came in the vehicle after purchasing coconut thatches. Had the said vehicle been driven cautiously and at a controllable speed, the accident could have been averted. Therefore, the accident should have happened only due to rash and negligent driving of the driver of the first respondent's vehicle and in the manner as stated by PW1. Accordingly, it is decided that the accident had happened due to the rash and negligent driving of the driver of the first respondent's vehicle and that the driver of the first respondent's alone is responsible for the accident.

9. This Court has also perused and examined the materials and evidence available on record.

10. In the claim petition, the first respondent / claimant has categorically pleaded that he engaged the insured goods vehicle to purchase coconut leaves for his house and proceeded in the insured vehicle to Nathapattu, Cuddalore and after purchasing the coconut leaves at Nathapattu, he came back in the insured vehicle to his village. He has also pleaded that he was sitting near the Driver seat and travelling in the vehicle when the said vehicle met with an accident on 20.10.2007. The FIR (Ex.P1) as well as the oral evidence adduced by the first respondent / claimant before the Tribunal also supports the contention of the first respondent / claimant, as seen from his pleadings. The appellant / Insurance Company has adduced oral evidence through their official (RW1) before the Tribunal. But they have not produced any documentary evidence or any other independent report to establish that the first respondent / claimant was a gratuitous passenger at the time of the accident. Any adjudication of the claim by the Motor Accidents Claims Tribunal is based on preponderance of probability. The accident is admitted by the appellant / Insurance company. The nature of injuries sustained by the first respondent / claimant has also not been disputed by the appellant / Insurance Company. Sufficient pleadings have been made by the first respondent / claimant in their claim petition, which is consistent with the oral evidence adduced by them before the Tribunal, which would clearly indicate that the first respondent / claimant was not a gratuitous passenger as alleged by the appellant / Insurance Company. The appellant / Insurance Company having not produced any documentary evidence before the Tribunal in support of their contention, the Tribunal had no option to left but to accept the claim of the first respondent / claimant that he was not a

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gratuitous passenger at the time of the accident. Hence, this Court is of the considered view that the Tribunal has rightly rejected the contention of the appellant / Insurance Company that they are not liable to compensate the claim of the first respondent / claimant. However, the evidence available on record which includes, the FIR (Ex.P1) will clearly indicate that four persons were travelling in the goods vehicle (insured vehicle) at the time of the accident, whereas the seating capacity of the insured vehicle is only two. When excess persons have travelled in the goods vehicle, the Tribunal ought to have awarded pay and recovery rights to the appellant / Insurance Company, in view of the policy violation committed by the second respondent, who is the owner of the vehicle.

11. In the result, the appeal is partly allowed by directing the appellant / Insurance Company to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.250 of 2009, on the file of the Motor Accident Claims Tribunal (III Additional District Judge) at Pondicherry, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter. It is made clear that the appellant / Insurance Company is permitted to recover the amount from the second respondent by filing an execution petition before the same Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsi2
To
1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
at Pondicherry.

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

MG(CO)
SP(22/04/2021)

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