IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.NO.2527 OF 2015
AND
M.P.NO.1 OF 2015

The Manager,
National Insurance Company Limited,
Thiruchengodu Branch Office,
2nd Floor, 81D Setti Street,
Thiruchengodu. ...Appellant / 2nd Respondent

Vs

1.P.Sekar ...1st Respondent / Petitioner
2.T.Rajendran ...2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 30.08.2013 made in M.C.O.P.No.553 of 2010 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Perambalur.

For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance

J U D G M E N T
(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellant. No representation for the respondents, though notice was served on them.

2. This appeal is filed by the Insurance Company aggrieved by the liability fixed on the Insurance Company in case where there is violation of policy condition.

3. The facts of the case is that on 04.01.2010, when the claimant Sekar along with others travelling in a Trailor bearing Registration No. TAM 8673 loaded with stones and attached to the Tractor bearing Registration No.TN 27-Y-2655. The Tractor and Trailor insured under the appellant Insurance Company. Due to rash and negligent driving of the driver while returning from the hill situated at Kavulpalayam, the Trailor got detached from the Tractor and the Trailor capsized. One of the occupant Srinivasan died. The claimant sustained multiple grievous injuries all over the body. The claimant, after treatment survived and filed a claim petition seeking a compensation of Rs.7,00,000/- alleging that he was earning a sum of Rs.10,000/- per month as a Loadman and Stone Crusher.

4. The Insurance Company contested the claim on the ground that they are not liable to pay any compensation to the claimant, since he is an unauthorized passenger travelling in the Trailor, which is not supposed to carry any passenger.

5. However, the Tribunal held that the Insurance Company is liable to pay compensation, since the Trailor and Tractor are insured and the accident occurred due to the detachment of the Trailor from the Tractor. Relying upon the terms of the policy, copy marked as Ex.R1, since premium collected for both Tractor and Trailor, the Tribunal treated the injured as Loadman for the transport of broken stones and awarded compensation of Rs.2,82,500/-.

6. Aggrieved by the said award, the present appeal is filed.

7. Learned counsel appearing for the appellant would submit that it is now well settled by catena of judgments of the Hon'ble Supreme Court and the Hon'ble High Court of this Court that any unauthorised passenger travelling in the Trailor, which is attached with Tractor to transport goods cannot claim compensation from the Insurance Company. Being an unauthorised passenger in this case, the first respondent/claimant is not entitled to claim compensation against the Insurance Company and if at all, there is any liability, it is the vehicle owner, who has to compensate.

8. Learned counsel for the appellant would draw attention of this Court the policy marked as Ex.R1, wherein no premium

collected for the employee or passenger and pointed out that the third party risk premium collected for the Trailor has been misunderstood by the Tribunal that it is the premium collected for passenger also unauthorisedly travelling in the trailor attached.

9. On perusing the record, this Court finds that the injured claimant was travelling along with the stones in the Trailor. When the Trailor got detached from the Tractor, the claimant has sustained injury. The premium collected by the Insurance Company does not cover risk of employee or passenger. It is a third party Act only policy. Neither the Trailor nor the Tractor have any seating capacity except the driver. In the said circumstances, in view of the judgments of the Supreme Court in National Insurance Co. Ltd., vs. Chinnamma and others, (2004(8) SCC 697); National Insurance Co. Ltd. Vs Bommithi Subbhayamma and Others, (2005 (12) SCC 243) and New India Assurance Co. Ltd. Vs Vedwathi and others, (2007(3) SCALE 397), followed by this Court in The New India Assurance Co. Ltd., vs Murugammal, CMA No.2147 of 2016, the view submitted by the learned counsel for the appellant is sustainable and as a result, the Civil Miscellaneous Appeal is allowed.

10. The Tribunal award is therefore modified to the effect that the appellant Insurance Company is exonerated from the liability to pay the compensation to the first respondent and the liability is fixed on the second respondent/owner of the vehicle. If any amount is deposited by the appellant in the MCOP account pursuant to the interim order of this Court, the same may be withdrawn by the appellant. The claimant shall proceed against the second respondent, the owner of the vehicle for recovery of the award amount.

11. In the result, the Civil Miscellaneous Appeal is allowed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(Principal District Judge),
Perambalur.

CMA NO.2527 of 2015

MP(CO)
RVM(31/08/2021)