IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2298 of 2013

Oriental Insurance Co Ltd,
89, Shree Pankaj Complex,
Perambur Barracks Road,
Purasaiwakkam, Chennai-7. ... Appellant/2nd Respondent

Vs.

1.Santha Gounder ...1st Respondent/Petitioner

2.Tmt.Gopu Sundari ...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.1058 of 2009 dated 15.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.J.Chandran

For Respondents: Mr.C.Prabakaran, for R1.
R2 Not Ready notice.

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.1058 of 2009 dated 15.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

2. The case of the claimant is that on 25.01.2009 at about 9.30pm the claimant was driving a lorry bearing No.TN28-Y-7779 from Dharmapuri to Salem, at that time a tanker lorry bearing No.TN01-V-5933 belonging to first respondent/Gopu Sundari insured with the appellant herein was driven by its driver from Dharmapuri side in a very rash and negligent manner and lost his control and dashed against one car bearing NoKA09-M-4866 and then dashed against the lorry driven by the claimant and caused the accident. Due to the sudden impact, the lorry was capsized

on the road and the right hand of the claimant was broken and sustained multiple injuries all over the body. The claimant was taken to Government Hospital, Dharmapuri and from there to Government Hospital, Sankari and thereafter shifted to T.Alagappa Memorial Hosputal, Sankagiri and he was admitted as inpatient for ten days. After the accident the claimant was not able to drive the lorry.

3. The learned counsel for the second respondent/insurance company submits the insurer of the lorry was moving slowly, the car crossed the road with high speed without following the road rules, the lorry TN01-V-5933 who did not expect the sudden negligent act of the car driver turned the lorry with his best efforts to avoid the accident and dashed against the claimant's lorry. The owner of the lorry TN01-V-5933 has not informed about the accident immediately, hence, the insurer is not liable to indemnify the owner of the lorry for breach of the terms of the policy conditions.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P11. No oral evidence has been adduced on the sided of the respondents and marked Ex.R1 to Ex.R5.

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

6. The learned counsel for the appellant/insurance company submits the quantum of compensation awarded by the Tribunal is highly excessive, exorbitant and unsustainable. Ex.R2/Driving licence, Ex.R3 and Ex.R4/Notice to the owner and driver pleaded that the insurance company is not liable to pay the compensation, as the tanker lorry used for carrying hazardous materials was driven without valid endorsement in the driving licence in violation of Rule Sec 9(3) of the Central Motor Vehicle Rules and for violation of terms and conditions of Insurance Policy.

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. He was not able to drive the vehicle and not able to lift heavy things with his right hand. The compensation awarded by the Tribunal is not sufficient and seeks for enhancement of compensation.

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 considered the fact that

the driver of the lorry TN01-V-5933 drove the lorry which carries hazardous goods in the vehicle. The driver has not possessed any valid licence as contemplated under Rule 9(3) of the Central Motor Vehicles Rules, 1989, wherein the licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. The driver drove the lorry without any endorsement in the driving licence as prescribed under Rule 9(3) of the Central Motor Vehicle Rules, 1989. The Tribunal without considering this aspect 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 the compensation to the claimant.

9. In view of the above discussion, the civil miscellaneous appeal is partly allowed. The appellant/insurance company is directed to pay the compensation to the claimant and to recover the same from the owner of the lorry TN01-V-5933 in accordance with law. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

tsh

To

The Additional District Judge,
The Motor Accident Claims Tribunal,
Dharmapuri.

+1cc to Mr.J.Chandran, Advocate SR.7782
+1cc to Mr.C.Prabakaran, Advocate SR.7623

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