IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2533 of 2013
and
M.P.No.1 of 2013

The Branch Manager,
National Insurance Company Limited,
Kumbakonam City,
Kumbakonam Municipality,
Kumbakonam Taluk. .. Appellant /Respondent

Vs.

S.Rameshkumar .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.09.2012 made in M.C.O.P.No.66 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvarur.

For Appellant : Mr.S.Vadivel

For Respondent : Mr.M.Thamizhavel

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 10.09.2012 made in M.C.O.P.No.66 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvarur.

3.The appellant is the respondent in M.C.O.P.No.66 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvarur. The respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.12.2006.

4.According to the respondent, on 01.12.2006 at about 04.15 P.M., he was driving his load auto bearing Registration No.TN 50

D 0190 on Thiruthuraipoondi - Muthupettai Road, when he was turning his load auto near Sekkadikulam turn, the load auto toppled and thus the accident occurred. In the accident, the respondent sustained multiple grievous injuries all over his body and immediately after the accident, he was taken to Government Hospital, Thiruthuraipoondi and thereafter he was referred to TMCH, Thanjavur, where he took treatment as in-patient for five days. Therefore, the respondent filed the claim petition claiming a sum of Rs.2,00,000/- as compensation against the appellant-Insurance Company, being the insurer of the load auto.

5.The appellant-Insurance Company, being the insurer of the load auto belonging to the respondent filed counter statement and denied all the averments made by the respondent. According to the appellant-Insurance Company, the respondent has to prove the date and time of the accident. The accident has occurred only due to negligence on the part of the respondent. In the F.I.R. also it has been stated that the accident has occurred only due to negligence on the part of the respondent. The respondent was not possessing valid driving license at the time of accident. As per the policy condition, no premium was paid for the owner of the vehicle. The policy covers only unnamed passengers and not for the owner and it is a package policy. Hence, the appellant-Insurance Company is not liable to pay any compensation to the respondent. The respondent has to prove that the load auto belonging to him had valid insurance policy at the time of accident. The respondent has to prove his age, avocation, income, nature of injuries sustained and disability suffered by him by producing valid documents. In any event, the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the respondent examined himself as P.W.1 and Dr.Ramachandran was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant-Insurance Company examined one Veerappan, who is the Senior Assistant in the appellant-Insurance Company as R.W.1 and marked two documents as Exs.R1 and R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to toppling of the load auto belonging to the respondent and directed the appellant-Insurance Company, being the insurer of the load auto belonging to the 1st respondent to pay a sum of Rs.49,500/- as compensation to the respondent.

8.Against the said award dated 10.09.2012 made in M.C.O.P.No.66 of 2011, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the respondent is the owner-cum-driver of the load auto, he is the tort feasor and he is not entitled to claim compensation from the appellant. Ex.R2/Policy issued by the appellant is only to cover the death occurred to the owner or if he suffers any permanent disability. The Tribunal without considering the contents in Ex.R2, on misconception, erroneously fastened the liability on the appellant-Insurance Company. The Tribunal ought to have dismissed the claim petition against the appellant-Insurance Company. The Tribunal without framing issues with regard to negligence, has not answered the said issue and prayed for setting aside the award passed by the Tribunal.

10.Mr.M.Thamizhavel, learned counsel appearing for the respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondent and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the contention of the respondent that he is the driver-cum-owner of the load auto. When he was driving the load auto, the vehicle over turned due to which the respondent sustained bone fracture in distal radius in left hand, bone fracture over ulna styloid left hand, grievous injury of 3 X 5 cm in right arm, injury about 1 X ½ cm over the forehead, linear abrasions of size 3 X 1 cm and 4 X ½ cm in the left arm, tenderness and deformity of left wrist joint and multiple injuries all over his body. The appellant-Insurance Company denied their liability to pay the compensation on the ground that the respondent is the tort feasor and as per the terms of policy, the appellant can pay compensation to the owner, only when the owner dies in the accident or the owner suffers permanent disability. R.W.1/Senior Assistant of appellant-Insurance Company examined by the appellant also deposed to that effect. The respondent examined P.W.2/Doctor, who deposed the nature of injuries sustained by the respondent and certified that respondent suffered 35% permanent disability. The appellant has not examined any Doctor to disprove the evidence of P.W.2/Doctor that respondent suffered 35% permanent disability.

13.The Tribunal considering the above materials, held that appellant-Insurance Company is liable to pay compensation for the permanent disability sustained by the respondent. The Tribunal has properly appreciated the terms of Ex.R2/Insurance Policy, evidence of R.W.1/Senior Assistant of appellant-Insurance Company, P.W.2/Doctor and held that appellant-Insurance Company is liable to pay the compensation to the respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.49,500/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, 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.66 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvarur. On such deposit, the 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Thiruvarur.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 34476
+1cc to Mr.M.Thamizavel, Advocate, S.R.No. 34022

C.M.A.No.2533 of 2013

CNR(CO)
GN(10/05/2021)