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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.260 of 2013

and

M.P.No.1 of 2013

ICICI Lombard General Insurance Company Limited,
Swarnambigai Plaza,
Omalur Main Road, Salem. ... Appellant/2nd Respondent

Vs.

1.Sivalingam ...1st Respondent/Petitioner

2.S.Palani ... 2nd Respondent/first Respondent

(R2 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.02.2012 made in M.C.O.P.No.853 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

For Appellant : Ms.R.Sree Vidhya

For R1 : Mr.M.Selvam

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 23.02.2012 made in M.C.O.P.No.853 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

3.The appellant is the 2nd respondent in M.C.O.P.No.853 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.05.2009.



4. According to the 1st respondent, on 19.05.2009 at about 04.00 P.M., while he was travelling in the 2nd respondent's tractor bearing Registration No. TN 29 AZ 9940 after loading the sand from Kooduthurai Patti near Deivamedu bus stop, the driver of the tractor drove the same in a rash and negligent manner and due to the said impact, the 1st respondent was tumbled down from the tractor and the tractor wheel ran over the left leg of the 1st respondent. Immediately after the accident, the 1st respondent was taken to Government Medical College Hospital, Dharmapuri and thereafter he was shifted to St. John's Medical College Hospital, Bangalore. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the tractor respectively.

5. The 2nd respondent, being the owner of the tractor remained exparte before the Tribunal.

6. The appellant-Insurance Company, insurer of the tractor belonging to the 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident has not occurred as alleged by the 1st respondent and the appellant denied the manner of accident. At the time of accident, while the driver of the 2nd respondent's tractor was driving the tractor in careful manner, the 1st respondent who was sitting on the tractor fell down on his own negligence without holding any grip and sustained injuries. The 2nd respondent's tractor was not insured with the appellant and also the driver of the tractor belonging to 2nd respondent was not possessing valid driving license at the time of accident. No persons are allowed to travel in the tractor and the 1st respondent has traveled only as unauthorized passenger at the time of accident and he did not travel in the tractor as coolie. No premium was paid by the 2nd respondent to cover the risk of unauthorized passengers. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and period of treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.S.Krishnakumar was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On behalf of appellant, one Durai was examined as R.W.1 and three documents were marked as Exs.R1 to R3.



8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the tractor belonging to 2nd respondent and directed the 2nd respondent and appellant to jointly or severally pay a sum of Rs.1,54,065/- as compensation to the 1st respondent.

9.Against the said award dated 23.02.2012 made in M.C.O.P.No.853 of 2009, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that in the tractor only the driver can travel and no other persons can travel in the tractor. The 1st respondent in the claim petition has stated that he was traveling in the tractor. The Tribunal failed to properly appreciate the pleadings and evidence let in by the appellant and erroneously directed the appellant to pay the compensation to the person not covered by the policy and prayed for setting aside the award passed by the Tribunal.

11.The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials available on record, it is seen that it is the contention of the 1st respondent in the claim petition that he after loading the sand in the tractor, he traveled in the tractor for unloading the sand and due to rash and negligent driving by the driver of the tractor, accident has occurred and he sustained injuries in the accident. In support of his case, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1. On the other hand, it is the case of the appellant is that the 1st respondent traveled as unauthorized passenger and the claim of the 1st respondent is not covered by the policy issued by the appellant. The appellant examined his official as R.W.1 in support of their case and marked copy of the Registration Certificate, Insurance Policy and Motor Vehicle Inspector Report as documents Exs.R1 to R3. R.W.1 in the cross examination admitted that in the F.I.R., it has been stated that 1st respondent was traveling by sitting on the sand. Admittedly in the tractor sand cannot be loaded and only in the trailer sand and other goods can be loaded. The contention of the appellant that 1st respondent himself admitted that he traveled



in the tractor is not acceptable in view of the averments in the claim petition that 1st respondent after loading the sand in the tractor, he traveled in the tractor for unloading the sand. Considering the averments in the claim petition, contents in F.I.R., admission of R.W.1 that 1st respondent was sitting on the sand, the Tribunal held that 1st respondent traveled to unload the sand and he is entitled to claim compensation and directed the appellant to pay the compensation to the 1st 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.1,54,065/- awarded by the Tribunal alongwith interest @ 7.5% per annum, as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent and the appellant-Insurance Company are jointly or severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, 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.853 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. On such deposit, the 1st 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court,
Dharmapuri.

Copy to

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

+1cc to Mr.M.Selvam, Advocate Sr.42679

C.M.A.No.260 of 2013

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