

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2683 of 2013

United India Insurance Co. Ltd.,
5, Big Bazaar Street,
Dharapuram, Erode District.
(Policy No.170603/31/07/02/00004752
Validity 21.9.2007 to 20.9.2008) ..Appellant/R3

Vs

1.C.R.Subramaniam ..R1/ Petitioner

2.K.C.Nataraj ..R2/R1

3.G.GovindasamyR3/R2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 29.06.2012 made in MCOP.No.262 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.A.Deivasigamani
for R1

R2 - Notice served, name printed
No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 29.06.2012 made in MCOP.No.262 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Coimbatore.

2.The appellant herein is United India Insurance Company, who is the third respondent in M.C.O.P.No.262 of 2009. The first respondent herein filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries that he had sustained during the accident that took place on 25.05.2008.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving of the first respondent, who is driving the second respondent's lorry bearing Registration No. TNX-6426 and directed the appellant-Insurance Company, who is the third respondent therein, to pay a sum of Rs.8,53,900/- as compensation to the petitioner along with interest at the rate of 7.5% per annum. Challenging the said award dated 29.06.2012 made in M.C.O.P.No.262 of 2009, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel for the appellant submitted that the first respondent is an agriculturist. He is not authorised to unload the goods carried in a lorry. At the time of alleged accident, the first respondent has unloaded the goods from the lorry and he had sustained injuries. Even though Maize sticks were loaded and unloaded in Velusamy's land, the first respondent is not a loadman to carry out the unloading works, as he is also one of the other owners, who have procured the materials.

5.The learned counsel appearing for the first respondent/claimant contended that the Tribunal after considering the materials on record awarded reasonable compensation and prayed for dismissal of the appeal.

6.Heard the learned counsels appearing for the appellant as well as the respondent and perused the materials available on record.

7.Taking into consideration the facts and circumstances of the case, this Court is of the view that the claimant, being an agriculturist and also one of the owners of the materials, is not authorised to stand on top of the vehicle to unload the goods. In the considered opinion of this Court, the Tribunal ought to have rejected the claim petition to fix the liability on the Insurance Company, on the ground that the policy conditions do not cover such kind of incidents and the compensation of Rs.8,53,900/- awarded by the Tribunal to the claimant fixing the liability on the Insurance Company is not proper. Therefore, only the owner of the lorry is liable to pay compensation to the claimant for violating the policy conditions. The appellant/Insurance Company is hereby directed to pay the compensation to the claimant and recover the same from the owner of the lorry in accordance with law.

8.In the result, the Civil Miscellaneous Appeal is allowed and the appellant-Insurance Company shall proceed against the owner of the lorry in accordance with law. The Judgement and Decree of the Tribunal remains unaltered in other respects. No costs.

Sd/-

Assistant Registrar(CS)

hvk
To

The Motor Accident Claims Tribunal,
I Additional Subordinate Judge,
Coimbatore.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.A.Deivasigamani , Advocate SR.No. 6106

+1cc to Mr.S.Arun kumar , Advocate SR.No. 6731

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A.SK(08/09/2020)



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