IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2717 of 2013
and M.P. No.1 of 2013

National Insurance Company Ltd.,
Thanthai Periyar Complex,
Near Old Bus Stand,
Salem. .. Appellant

Vs.

1.Subramani

2.Azhagesan

3.A.Pazhanimalai

4.National Insurance Co. Ltd.,
73, Perundurai Road,
Erode-11.

5.G.Venketesan .. Respondents

(R2 and R3 were set exparte before the Tribunal and notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 05.03.2010, made in M.C.O.P. No.349 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

For Appellant : Ms. N.B. Surekha

For Respondents: Mr. C. Kulanthaivel (For R1)
R2-Not Known
No appearance (For RR3 to 5)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree dated 05.03.2010, made in M.C.O.P. No.349 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

2. The appellant is the 5th respondent in M.C.O.P. No.349 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani. The 1st respondent/claimant 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 19.12.2006.

3. According to the 1st respondent, on the date of accident, at about 8.45 a.m, he was traveling in a Tempo Van bearing Registration No.TDR-6979 belonging to the 5th respondent, driven by its driver slowly and carefully, observing all the rules near Bangalore bye-pass road. At that time, the 2nd respondent, driver of the Maruthi Omni Van bearing Registration No.TN-33-J-0094 belonging to the 3rd respondent, ahead of the Tempo Van, suddenly applied brake. The driver of the Tempo Van, unable to avert the accident, dashed on the back side of the Maruthi Omni Van and caused accident. The accident occurred due to rash and negligent driving by the 2nd respondent, driver of the Maruthi Omni Van. In the accident, the 1st respondent sustained grievous injuries and the driver of the Tempo Van died on the spot. The appellant and 5th respondent as insurer and owner of the Tempo Van and respondents 2 to 4 as driver, owner and insurer of the Maruthi Omni Van are liable to pay compensation.

4.The 3rd respondent remained exparte before the Tribunal.

5.The 4th respondent-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the 4th respondent, the accident occurred only due to rash and negligent driving by the driver of the Tempo Van in which the 1st respondent traveled. FIR is registered only against the driver of the Tempo Van. As contended by the 1st respondent, the driver of the Tempo Van did not die in the accident. The claim petition is bad for non-joinder of the driver of the Tempo Van bearing Registration No.TDR-6979 and for wrongly impleading the 4th respondent Branch as insurer of the Maruthi Omni bearing Registration No.TN-33-J-0094, instead of Mettur Branch. The 1st respondent has to prove that 4th respondent is insurer of the Maruthi Omni bearing Registration No.TN-33-J-0094 at the time of accident and the 2nd respondent, driver had valid driving license to ply the vehicle.

The 1st respondent also has to prove the age, avocation and income, injuries suffered and treatment taken to claim compensation. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.The appellant-Insurance Company filed separate counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident occurred due to rash and negligent driving by the Tempo Van bearing Registration No.TDR-6979 belonging to the 5th respondent, in which the 1st respondent traveled. FIR is registered only against the driver of the Tempo Van. The claim petition is bad for non-joinder of one Venkatraman, driver of the Tempo Van. The driver of the Tempo Van has violated the policy conditions by permitting 20 persons to travel in the vehicle. In any event, the 1st respondent has to prove his age, avocation and income, injuries sustained and treatment taken to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one eye-witness as P.W.2 and one Doctor as P.W.3 and marked 15 documents as Exs.P1 to P15. The appellant examined two witnesses as R.W.1 and R.W.2 and marked 2 documents as Exs.R1 and R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, holding that the accident occurred due to rash and negligent driving by the driver of the Tempo Van belonging to the 5th respondent, dismissed the claim petition as against the respondents 2 to 4 who are the driver, owner and insurer of the Maruthi Omni Van and directed the appellant as insurer of the Tempo Van to pay a sum of Rs.2,25,110/- as compensation to the 1st respondent. The Tribunal dismissed the claim petition as against the 5th respondent for not filing batta.

9.Against the said award dated 05.03.2010, made in M.C.O.P. No.349 of 2007, the appellant - Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent traveled as unauthorized passenger in the goods vehicle. At the time of accident, 20 persons traveled in the Tempo Van belonging to the 5th respondent. The Tribunal without properly considering the fact that the 1st respondent traveled as unauthorized passenger, erroneously fastened the liability on the appellant. The Tribunal erred in holding that the 1st respondent traveled as load man without any evidence and in a biased manner and allowed the claim petition holding that the appellant alone is liable to pay the compensation. The claim petition filed by the 1st respondent was dismissed as against the 5th respondent, owner of the Tempo Van for not filing batta. The liability of the insurer is only to indemnify the insured. Once the claim petition is dismissed against the insured, the insurer is not liable to pay compensation to the 1st respondent and prayed for allowing the appeal.

11.Per contra, the learned counsel appearing for the 1st respondent contended that at the time of accident, the 1st respondent and P.W.2 traveled as load man along with barrels of Thar. They are not unauthorized passengers. The 1st respondent examined himself as P.W.1 and examined one co-passenger as P.W.2. Both P.W.1 and P.W.2 specifically deposed that they traveled as loadmen along with barrels of Thar. The appellant has not let in any evidence to disprove the evidence of P.W.1 & P.W.2. The appellant also has not let in any evidence to show that 20 persons traveled at the time of accident in the Tempo Van. R.W.2-Official of the appellant – Insurance Company admitted that the 5th respondent, owner of the Tempo Van has paid premium for two workers and therefore, the appellant is liable to pay compensation to the 1st respondent. Apart from 1st respondent, no other persons filed any claim petition. The learned counsel appearing for the 1st respondent further contended that the appellant-Insurance Company filed I.A. under Section 170 of the Motor Vehicles Act to contest the matter on all the grounds available to the owner of the vehicle and permission was granted. The appellant contested the claim petition on all the grounds available to the owner. In view of the order permitting the appellant to contest all the grounds, the appellant is estopped from contending that they are not liable to pay compensation as claim petition against the 5th respondent, owner of the Tempo Van was dismissed. The Tribunal considering the entire materials, has held that the appellant is liable to pay compensation and there is no error in the said finding and prayed for dismissal of the appeal.

12.Though notice has been served on the respondents 3 to 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13.Heard learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

14. In the appeal, following two issues are to be decided:

(i) Whether the appellant-Insurance Company is not liable to pay compensation to the 1st respondent when the claim petition against the 5th respondent, owner of the Tempo Van was dismissed for not filing batta ?

(ii) Whether the 1st respondent traveled as unauthorized passenger or traveled as load man along with barrels of goods ?

Point No. 1:

15.From the materials on record, it is seen that the 1st respondent has filed claim petition claiming compensation for the injuries sustained by him in the accident that occurred on 19.12.2006, against the respondents 2 to 5 and appellant, being the driver, owner and insurer of the Maruthi Omni Van as well as the owner and insurer of the Tempo Van. The Tribunal considering the evidence let in by the respondents 1 and 4 and appellant and documents marked, held that the accident has occurred only due to rash and negligent driving by the driver of the Tempo Van belonging to the 5th respondent. On such finding, the Tribunal held that the appellant as insurer of the Tempo Van is liable to pay compensation to the 1st respondent.

16.In the present appeal, the learned counsel appearing for the appellant contended that when the claim petition was dismissed against the 5th respondent/owner of the Tempo Van, the appellant as insurer of the Tempo Van is not liable to pay compensation. It is the further contention of the learned counsel appearing for the appellant that liability of the insurer is only to indemnify the insured. On the other hand, it is the contention of the learned counsel appearing for the 1st respondent that appellant has filed petition under Section 170 of the Motor Vehicles Act to contest the matter on all the grounds available to the owner of the vehicle and therefore, the appellant is estopped from raising such ground in the appeal. The learned counsel appearing for the appellant has not produced any judgment to substantiate this contention that when the claim petition was dismissed against the owner, the Insurance Company is not liable to pay any compensation.

17. On the other hand, it is not disputed that the appellant has filed petition under Section 170 of the Motor Vehicles Act and the said petition was allowed and permission granted by the Tribunal to raise all the grounds available to the owner of the vehicle. Once petition filed under Section 170 of the Motor Vehicles Act was allowed, the insurer steps into the shoes of the insured and is permitted to contest on behalf of the owner. In view of such statutory provision of the Motor Vehicles Act and availing such benefit by the appellant, it is

not open to the appellant to contend that the appellant is not liable to pay any compensation when the claim petition is dismissed against the owner of the Tempo Van/5th respondent. The finding of the Tribunal holding that the appellant is liable to pay compensation to the first respondent does not suffer any error, warranting interference by this Court.

Point No.2:

18. The second contention of the appellant is that the 1st respondent traveled as unauthorized passenger in the goods vehicle. The learned counsel appearing for the appellant relied on the contents of FIR registered based on the complaint given by the 2nd respondent, driver of the Maruthi Omni Van. In the FIR, it has been stated that 20 persons traveled at the time of accident and they were injured. On the other hand, it is the contention of the 1st respondent that he traveled along with P.W.2, as load man with barrels of Thar in the Tempo Van. The 1st respondent proved the said contention by examining himself as P.W.1 and examining P.W.2, who also traveled in the Tempo Van along with 1st respondent at the time of accident. The appellant examined R.W.2 – Official of appellant-Insurance Company who admitted that the 5th respondent, owner of the Tempo has paid premium for two of his workers. The appellant has not examined 2nd respondent, driver of the Omni Van who lodged the complaint or any other eye-witness to prove that 20 persons traveled at the time of accident. The appellant also failed to disprove the evidence of P.W.1 and P.W.2 that they traveled as load man along with barrels of Thar. No evidence was let in by the appellant to show that at the time of accident there were no goods in the Tempo Van and only the 1st respondent and others traveled in the goods vehicle as unauthorized passengers. It is pertinent to note that except the present claim petition filed by the 1st respondent, no other claim petition was filed claiming compensation for the very same accident. The Tribunal considering the evidence let in before the Tribunal and the admission of R.W.2 that premium was paid for two of his workers, held that the 1st respondent traveled as load man and not as unauthorized passenger and appellant is liable to pay compensation. There is no perversity in the said finding of the Tribunal warranting interference by this Court.

19.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.2,25,110/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, 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.349 of 2007. 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, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Bhavani.

2.The Section Officer,
V.R Section,
High Court, Madras. +2 Copies

+1cc to Ms.N.B. Surekha, Advocate SR.No.34434

+1cc to Mr.C. Kulanthaivel, Advocate SR.No.34559

C.M.A. No.2717 of 2013

SRA(CO)
GMY(28/04/2021)