

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2759 of 2013

and

MP.No.1 of 2013

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office, No.3-L,
Siddaverappa Chetty Street,
Dharmapuri.

.... Appellant/2nd Respondent

vs.

1.M.Lakshmidevi
2.K.Arul
3.K.Krishnan

.... Respondents/Petitioner
Respondent1 & 3 in
MCOP.No.192/08

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 23.02.2012 in M.C.O.P.No.192 of 2008 on the file of the Motor Accident Claims Tribunal (Special Judge), Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1,R3-served, name
printed-No appearance
R2 - Exparte before the Tribunal

J U D G M E N T
सत्यमेव जयते

The Oriental Insurance Company, the second respondent in MCOP.No.192 of 2008 on the file of the learned Special Judge, Krishnagiri has filed the present appeal questioning their liability to pay compensation.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.7,00,000/- for the injuries sustained by her in a road accident that took place on 06.08.2007.

3. The case of the first respondent / claimant is that on 06.08.2007, at about 01.30 pm, she was travelling along with Ice Cream Box in a Mahindra Champion Minidor Auto bearing Registration No.TN 29 F 9559, near B.R.G.Madhepalli M.G.R. Statue and at that time, the driver of the said Auto drove the vehicle in a rash and negligent manner, without following any rules and on seeing a pothole, the driver suddenly swerved the vehicle towards the middle of the road, due to which, the vehicle capsized and the first respondent / claimant sustained grievous injuries. Therefore, she filed MCOP.No.192 of 2008 seeking compensation for the injuries sustained by her.

4. The second respondent remained absent before the Tribunal and therefore, he was set exparte. The appellant and the third respondent herein contested the claim petition. The learned Special Judge, Krishnagiri after analysing the documents and evidences on record, awarded compensation of Rs.1,07,700/- together with interest at the rate of 9% per annum. The Tribunal held that the first respondent / claimant travelled in the said Auto along with goods though not as owner, she was carrying the goods on behalf of her owner and she paid fare to travel in the Auto and therefore, the Insurance Company cannot avoid its liability on the ground that she is an unauthorised passenger. Since the driver of the said Auto drove the vehicle without valid driving license, the Tribunal directed the Insurance Company to pay the compensation and then recover the same from owner of the Minidor Auto bearing Registration No.TN 29 F 9559. Challenging the said award dated 23.02.2012 passed in M.C.O.P.No.192 of 2008, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal ought to have dismissed the claim petition as the owner of the Minidor Auto bearing Registration No.TN 29 F 9559 committed breach of policy conditions and carried 22 passengers in the said Auto, without valid and effective driving licence to drive the vehicle. He further submitted that the Tribunal ought to have held that the injured travelled in the said Auto as an unauthorised passenger. He therefore prayed for exonerating the Insurance Company from paying compensation to the first respondent / claimant.

6. Though notice was ordered to the respondents 1 and 3 and served on them as early as on 27.09.2013 and names have been printed in the cause list, there is no representation for them either in person or through learned counsel. Considering the paucity of time, this Court is inclined to take up the present appeal.

7. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record.

8. From the materials available on record, it is seen that the first respondent / claimant travelled in the said Auto along with twenty other passengers. After perusing the Insurance Policy (Ex.P3), it is seen that the seating capacity is only 2 (including driver). As per the First Information Report (Ex.P1), 22 persons travelled in the vehicle at the time of accident. The Section 2 (14) of the Motor Vehicles Act clearly states that goods carriage vehicle is only for carrying goods and passengers are prohibited to travel in the same. Therefore, carrying 22 passengers in a good carriage vehicle is a clear violation of Policy Condition as well as Motor Vehicles Act, 1988. In the facts and circumstances, this Court is of the opinion that the appellant / Insurance Company is not liable to pay compensation to the injured and hence, the order passed by the Tribunal in MCOP.No.192 of 2008 is liable to be set aside.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. The quantum of compensation awarded by the Tribunal is hereby confirmed. The owner of the Minidor Auto bearing Registration No.TN 29 F 9559 is directed to deposit the award amount determined by the Tribunal along with interest and costs, to the credit of MCOP.No.192 of 2008 on the file of the Motor Accident Claims Tribunal / Special Judge, Krishnagiri within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent / claimant is permitted to withdraw the award amount along with interest and costs. The appellant is permitted to withdraw the amount, lying in the deposit to the credit of MCOP.No.192 of 2008, if the award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते -s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
Special Judge,
Krishnagiri.

2.VR Section,
High Court of Madras,
Chennai.

+1 cc to Mr.M.Krishnamoorthy Advocate sr15584

C.M.A.No.2759 of 2013
and
MP.No.1 of 2013

rjl(co)
aa02/03/2021



WEB COPY