IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2845 of 2013
and
M.P.No.1 of 2013

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishna Street, Tiruvannamalai,
Divisional Office at Puducherry.
... Appellant/ 3rd Respondent

Vs.

1. Swaminathan ...1st Respondent/ Petitioner
2. S.Vajravelu ...2nd Respondent/1st Respondent
3. R.Karthikeyan ...3rd Respondent/2nd respondent
4. S.Ramachandran ...4th respondent/ 4th respondent
5. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.547, Gandhi Road, Kancheepuram,
Divisional Office at Puducherry.
... 5thRespondent/ 5th respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 05.03.2012 made in M.A.C.T.O.P.No.1025 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.I.Charles
R2 & R3 - Exparte
R4 & R5 - Given up

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.03.2012 made in M.A.C.T.O.P.No.1025 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam.

2. The case of the appellant is that on 27.06.2008 at 9.30 p.m., the first respondent went to the Kadampuliyur Village to attend his relatives function in the second respondent's Car (Tata Sumo) bearing Registration No.TN-23-U-8142. At that time, the driver of the car drove the car in a rash and negligent manner and dashed against the fourth respondent's lorry bearing Registration No.TN-21-P-0675 which was parked on the side of the road and also against some pedestrians. Due to the impact, the first respondent sustained grievous injuries and immediately he was admitted for treatment in Government Hospital, Villupuram. At the time of accident, he was aged 20 years, and before the accident, he was a Coolie and was earning Rs.7,500/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence he filed a petition before the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam, claiming Rs.10,00,000/- as compensation against the second respondent and the appellant as they are the owner and insurer of the Car involved in the accident.

3. Denying the allegations, the appellant insurance company filed a counter affidavit before the Tribunal stating that the accident was happened only due to the negligence of the fourth respondent's driver who parked the lorry bearing Registration No.TN-21-P-0675 in the middle of the road and not due to the rash and negligent driving of the second respondent's driver. Further, it has been stated that the driver of the second respondent had no valid driving licence at the time of accident and the first respondent has to strictly prove that the driver of the second respondent had possessed valid driving licence at the time of accident. Moreover, it has been stated that the alleged age, occupation and income of the first respondent are not true and the amount of compensation claimed is highly excessive.

4. The fifth respondent insurance company which is the insurer of the fourth respondent's lorry also filed a counter affidavit denying the allegations stating that the accident was happened only due to the rash and negligent driving of the second respondent's driver and not due to the negligence of the fourth respondent's driver. Further, it has been stated that the driver of the fourth respondent had no valid driving licence at the time of accident and therefore the first respondent is not entitled to claim any compensation from them. Moreover, it has been stated that the alleged disability and nature of injury sustained by the first respondent are not true and the amount of compensation claimed is exorbitant.

5. During the trial, on the side of the appellant and the second respondent, neither any witness was examined nor any

document was marked. On the side of the first respondent/claimant, 12 witnesses were examined as PW1 to PW17 and 70 documents were marked as Exs.P1 to P70.

6. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent/claimant and awarded Rs.1,82,350/- as compensation under various heads.

7. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court stating that the second respondent's driver had carried 15 persons in the insured car by violating the policy conditions, and while that being so, the Tribunal ought to have completely exonerated them and passed the award only against the second respondent.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

9. On perusal of the records, it is seen that the dispute is now only with regard to fixing the liability and as far as the quantum of compensation is concerned, there is no any dispute.

10. On perusal of the award dated 05.03.2012 passed by the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam, it is observed that the first respondent in order to prove that the second respondent's car driver was the cause for the alleged accident marked Ex.P1 the FIR copy. On perusal of the same, the Tribunal had found that on 27.06.2008, when the fourth respondent's driver was pouring water into the radiator by stopping the lorry on the side of the road, the second respondent's car came in the high speed and hit against the lorry. Due to the impact, two persons traveled in the car were dead. Further, the Tribunal had found in the FIR that the accident was occurred only due to the rash and negligent driving of the driver of the second respondent. The appellant had not filed any document on his side denying the above statement, and therefore, the Tribunal based on the FIR had come to the conclusion that the accident was occurred only due to the rash and negligent driving of the second respondent's driver.

11. The second respondent is the owner of the Car (Tata Sumo), the fourth respondent is the owner of the Lorry, the appellant is the insurer of the Car (Tata Sumo) and the fifth respondent is the insurer of the Lorry. The contention of the appellant is that as per the policy, only 8 persons are allowed to travel in the alleged Car, but the second respondent's driver had carried 15 persons by violating the

policy conditions and therefore they are not liable to pay the compensation and only the second respondent is liable to pay the same. But, on perusal of the order of the Court below, it is observed that the appellant had not placed any single evidence to show that 15 persons were traveled in the alleged Car, and therefore, the Tribunal had rejected their claim and allowed the petition in favour of the first respondent. Even before this Court, the appellant has not placed any evidence to prove their allegations, and therefore, this Court is not inclined to interfere with the award of the Court below.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant insurance company is directed to deposit the entire award amount of Rs.1,82,350/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the second respondent. On such deposit being made, the first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Additional Subordinate Judge),
Tindivanam.

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

1 cc to Mr.M. Krishnamoorthy, Advocate, S. 16380
1 cc to Mr.P. Mani, Advocate, Sr. 18999

C.M.A.No.2845 of 2013
and
M.P.No.1 of 2013

RSK (CO)
kk 8/1