IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2225 of 2016
and
C.M.P.No.15806 of 2016

The National Insurance Co., Ltd.,
No.74 A, Paramathy Road,
Namakkal Post & Dt. ... Appellant/Respondent

Vs.

Thiru.Manimaran ... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.216 of 2015 dated 17.05.2016 on the file of the Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.J.Chandran

For Respondent : No appearance

J U D G M E N T

The appeal is filed against the judgment and decree dated 17.05.2016 passed in M.C.O.P.No.216 of 2015.

2.The National Insurance Company is the appellant before this Court and the learned counsel appearing on behalf of the appellant before arguing the case on merits, raised the question of maintainability of the claim petition before the Motor Accidents Claims Tribunal. In this regard it is contended that the claim petition filed by the respondent itself reveals that the claimant himself is the owner-cum-driver and he has not impleaded any other owner or vehicle and further, he has stated that he was driving the said vehicle.

3.The learned counsel for the appellant solicited the attention of this Court with reference to the counter filed before the Motor Accidents Claims Tribunal by the National Insurance Company, wherein they have narrated the entire facts based on the First Information Report as well as the facts stated in the claim petition. It is contended that the owner-cum-driver of the Tata 407 van violated the terms and conditions of the permit issued for his goods vehicle referred above. Therefore, carrying of passengers in the goods vehicle is prohibited as per the provisions of the Motor Vehicles Act as well as the Rules. In view of the fact that the owner-cum-driver violated the mandated conditions of the policy by allowing the passengers to be carried in the goods vehicle, hence, the Insurance Company is not liable to indemnify the claim. In support of the said claim, the learned counsel for the appellant referred the deposition of the claimant himself, wherein he has stated during the cross examination that 39 persons were travelling at the time of accident. The van is a goods carrier and carrying 39 passengers is in violation of the Motor Vehicles Act and further, in violation of the policy of the appellant Insurance Company.

4. Policy being a contract between the Insurance Company and the person insured, the terms and conditions are binding on both the parties. When the conditions of policy are violated and the provisions of the Motor Vehicles Act is also violated illegally by carrying the passengers in a goods carrier, then, the Insurance Company is not liable to indemnify the claim. In this regard, Section 123 of Motor Vehicles Act deals with riding on running board etc., Accordingly, no person shall travel on the running board or on top or on the bonnet of the Motor Vehicle. The driver is also obligated not to allow any such passengers to travel in a goods carrier. This being the mandatory provisions of the Act and during the cross examination the claimant himself admitted that at the time of accident 39 persons were travelling in the Van.

5. This Court is of the considered opinion that the Tribunal has committed an error in granting compensation, which is in violation of the provisions of law. Thus, the claim petition cannot be entertained and the Tribunal has committed a perversity in not deciding the issue regarding the maintainability of the claim petition with reference to the Motor Vehicles Act and in accordance with the terms and conditions of the policy which was existing at the time of accident.

6. Thus, the judgment and decree dated 17.05.2016 passed in M.C.O.P.No.216 of 2015 is quashed and C.M.A.No.2225 of 2016 stands allowed. No costs. The amount if any deposited by the appellant is to be reimbursed and in this regard the appellant is permitted to file an appropriate application before the Tribunal for refund of the deposited amount along with the accrued interest.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Perambalur.

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

+1cc to Mr.J.Chandran, Advocate Sr.20731

C.M.A.No.2225 of 2016

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srg 21/09/2020