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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3575 of 2013

The Divisional Manager,
M/s. New India Assurance Co. Ltd.
Jerome Building, II Floor,
Fort Station Road,
Trichy

...Appellant / 2nd Respondent

Versus

1.Mr. Subramanian, S/o. Velayudha Padayachi

...1st Respondent / Petitioner

2. Mr. R. Panchanathan S/o. Rajangam
(R2 was set exparte before the Tribunal)

...2nd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 29.04.2013 made in M.C.O.P.No.283 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ariyalur.

For Appellant : Mr. E. Rajadurai
(For N. Vijayaraghavan)

For Respondent-1 : Mr.S. Kamadevan
R2 - Ex-parte

J U D G M E N T

This appeal has been preferred by the Insurance Company against the Judgment and order in M.C.O.P.No.283 of 2010 dated 29.04.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ariyalur District, whereby the Insurance company was ordered to pay compensation to the claimant/1st respondent herein.

2. The facts of the case briefly are as follows:

On 14.09.2008, when the claimant/1st respondent herein along with 20 others was travelling in the offending goods vehicle at about 2.30.p.m from Ariyalur to Nachiyarpettai, the



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said offending vehicle got capsized suddenly at Nachiyarpettai bus stop and thereby the claimant/1st respondent herein and 20 others have sustained grievous injuries. In the result of injuries in the accident, the claimant/1st respondent has filed claim petition in M.C.O.P. No.283 of 2010 seeking for compensation of Rs.3,00,000 (Rupees Three Lakhs Only) on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ariyalur. After trial, the Tribunal has awarded a sum of Rs.1,66,000/- (Rupees One lakh and Sixty Six Thousand Only) to the claimant/1st respondent herein directing the Insurance Company to deposit the award amount.

3. Being aggrieved over the aforesaid award, the Insurance company/the appellant herein has filed the present appeal questioning the liability on it.

4. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent herein. The 2nd respondent was set exparte before the Tribunal as well as before this Court.

5. It is submitted by the learned counsel for the 1st respondent that the aforesaid accident took place while the claimant along with 20 others went to meet District Collector for giving a petition for their grievance.

6. On consideration of the materials and evidence available on the record, the Tribunal has awarded a total compensation of Rs.1,66,000/- (Rupees One lakh and Sixty Six Thousand Only) to the claimant/1st respondent herein along with interest @ 7.5% p.a. from the date of filing of the petition till the date of the deposit without taking into consideration that the claimant/1st respondent herein and 20 others were travelling in the offending vehicle as gratuitous passengers whereas the permitted seating capacity of the offending vehicle is only 2 including the driver and the same has been permitted only to carry on the goods only.

7. On perusal of the Insurance policy/Ex.P4, it is seen that the same was covered only to the owner of goods, whereas about 20 persons were travelled in the offending vehicle, which is not permitted. Therefore, it is made clear that gratuitous passengers including the 1st respondent/claimant have travelled in the offending vehicle being the goods carrier despite seating capacity of 2 including driver and the policy did not cover their lives. The offending vehicle is not to be used for the purpose of carrying the passengers and it is meant for carrying the goods only.

8. In view of the aforesaid fact, the Tribunal cannot



fastened the liability for compensation on the appellant/Insurance Company. At the same time, the 1st respondent is at liberty to claim the compensation against the owner of the offending vehicle. The appellant/Insurance Company is directed to withdraw the award amount if any, already deposited, in M.C.O.P. No.283 of 2010 dated 29.04.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ariyalur.

9. In the result, the appeal is allowed and the award passed by the Tribunal is hereby set aside. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

Copy To:

1.Motor Accident Claims Tribunal,
Subordinate Court, Ariyalur.

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

+1cc to M/s.N.Vijayaraghavan, Advocate, S.R.No.15765
+1cc to Mr.S.Kamadevan, Advocate, S.R.No.14935

C.M.A.No.3575 of 2013

KJ(CO)
SB(12/08/2021)