



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.621 of 2013
and M.P.No.1 of 2013

E.S.Samraj .. Appellant/1st Respondent

Vs.

1.S.Srinivasan ..1st Respondent/Petitioner

2.The Branch Manager
National Insurance Company Limited
Branch Office, No.333, Bangalore Road
Krishnagiri Town and District. ..2nd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2011 made in M.C.O.P.No.180 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For R1 : Mr.Prasanna
for Mr.M.Sriram

For R2 : Mr.S.Arunkumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the owner of the vehicle challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company dated 30.06.2011 made in M.C.O.P.No.180 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

2.The appellant is the 1st respondent in M.C.O.P.No.180 of 2008 on the file of Motor Accident Claims Tribunal, Chief



Judicial Magistrate's Court, Krishnagiri. The 1st respondent 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 18.02.2005.

WEB COPY

3. According to the 1st respondent, on the date of accident i.e., on 18.02.2005 at about 1.30 p.m., while the 1st respondent was travelling along with sugarcane load from his field to Palacode sugar mill for supply in the tractor-trailer belonging to the appellant insured with the 2nd respondent and when the vehicle was proceeding on Kaveripattinam to Palacode main road, near Elumitchanahalli bus stop, the driver of the said tractor-trailer drove the same in a rash and negligent manner and suddenly applied brake. Due to the said impact, the sugarcane load, which was loaded in the trailer, fell on the 1st respondent, he fell down on the road from the tractor, the left side wheel of the tractor ran on him and thus the accident has occurred. Due to the accident, the 1st respondent sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the appellant and the 2nd respondent.

4. The appellant being owner of the tractor-trailer filed counter statement and contended that the 1st respondent travelled in the tractor-trailer as owner of the sugarcane load. The said tractor-trailer is insured with the 2nd respondent/Insurance Company. At the time of accident, the insurance policy was in force and the driver of the vehicle was also possessing valid driving license. Therefore, the 2nd respondent/Insurance Company alone is liable to pay compensation to the 1st respondent. The appellant has also denied the age, income and nature of injuries suffered by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5. The 2nd respondent/Insurance Company, insurer of the tractor-trailer filed counter statement denying the averments made in the claim petition and stated that the driver of the tractor-trailer did not possess valid driving license to drive the said vehicle and he is the tort-feasor. The said vehicle was not insured with the 2nd respondent at the time of accident. The 1st respondent travelled in the vehicle as a gratuitous passenger and there is violation of policy conditions. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.G.Ashok Kumar was examined as P.W.2 and marked



WEB COPY

ten documents as Exs.A1 to A10. On the side of the 2nd respondent/Insurance Company, one Mr.Ravi, Administrative Officer of the Insurance Company was examined as R.W.1, the appellant, owner of the tractor-trailer was examined as R.W.2 and four documents were marked as Exs.B1 to B4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor-trailer belonging to the appellant, directed the appellant to pay a sum of Rs.97,573/- as compensation to the 1st respondent and dismissed the claim petition as against the 2nd respondent/Insurance Company as the appellant has violated the permit condition.

8.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company, the appellant, owner of the tractor-trailer has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that at the time of accident, the insurance policy was in force and the Tribunal ought to have fixed liability on the 2nd respondent/Insurance Company. The 1st respondent was travelling in the tractor to the sugar mill along with sugarcane from his field, which is an agricultural product. As per Section 147(1) (b) (i) of the Motor Vehicles Act, the 2nd respondent/Insurance Company is liable to pay compensation as the 1st respondent was travelling along with the goods. The appellant and the 1st respondent have not violated the policy conditions. In any event, the Tribunal ought to have ordered pay and recovery and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that as per the permit, the seating capacity of the tractor is only one for the driver. The appellant permitted the 1st respondent to travel in the tractor. The 1st respondent travelled in the tractor as an unauthorised passenger and hence, the 2nd respondent is not liable to pay any compensation to the unauthorised passenger. The Tribunal has considered all the materials placed before it and rightly dismissed the claim petition as against the 2nd respondent/Insurance Company and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the 2nd respondent/Insurance Company and perused the entire materials on record.



12. From the materials on record, it is seen that it is the contention of the 1st respondent that he travelled in the tractor along with sugarcane load. According to the appellant, the sugarcanes from his field were loaded in the trailer attached to the tractor and the 1st respondent travelled in the tractor to Palacode sugar mill. At that time, due to rash and negligent driving by the driver of the tractor, the accident has occurred. The 1st respondent fell down, the sugarcane load fell on him and left side wheel of the tractor ran over him. There is no dispute that the 1st respondent travelled in the tractor, even though sugarcane from the appellant's field were loaded to deliver in the sugar mill. As per the permit condition, only driver is permitted to travel and no other person is permitted to travel in the tractor along with driver. When a person travelled in the tractor is an unauthorised passenger and the Insurance Company is not liable to pay compensation to such person involved in the accident. The Tribunal considering the above materials as well as the judgments relied on by the respondents, has rightly dismissed the claim petition as against the 2nd respondent/Insurance Company and directed the appellant to pay compensation to the 1st respondent. There is no error in the said award of the Tribunal warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.97,573/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant, owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

kj



To

The Motor Accident Claims Tribunal
The Chief Judicial Magistrate
Krishnagiri.

Copy To

The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.37233

C.M.A.No.621 of 2013
and M.P.No.1 of 2013

VBA (CO)
GMY (24/08/2021)