

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1891 of 2014

A.Selvam

.. Appellant/Petitioner

Vs.

1.P.Sundaramoorthy

2.M/s.Bharti AXA General Insurance Co.Ltd.,
II Floor, Metro Plaza,
162, Anna Salai,
Chennai-600 002.

3.M.Sathish Kumar

4.The Branch Manager,
M/s. United India Insurance Co.Ltd.,
No.35.J, MBT Road,
Gandhi Chowk, Ranipet,
Vellore District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2014 made in M.A.C.T.O.P.No.124 of 2012 on the file of Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District.

For Appellant: Mr.C.Prabakaran

For R1 & R3 : Notice served, name printed-
No appearance.

For R2 : Mr.S.Arunkumar

For R4 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 24.3.2014 passed by the Tribunal in M.C.O.P.No.124 of 2012 on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, in and by which, the Tribunal directed the owner of the vehicle to pay the award amount while exonerating the Insurance Company.

2.The case of the appellant is that on 13.12.2010 at about 05.00PM, he along with six others travelled in TATA ACE vehicle bearing Registration No.TN-73-A-5067 at Kalavai Labbai Street, Vazhapandal Junction road. At that time, the driver of the said vehicle, without making any proper signal, took reverse of the vehicle and hit against another vehicle bearing Registration No.TN-23-E-0475, which was parked on the road. Due to the sudden impact, the appellant sustained injuries all over his body. The appellant was immediately taken to C.M.C.Hospital for treatment.

3.The appellant filed the claim petition in M.C.O.P.No.124 of 2012 before the Tribunal seeking compensation of Rs.10,00,000/-.

4.The first respondent/owner of the vehicle, on whose vehicle the appellant was traveling, remained ex-parte. The respondents two, three and four have filed individual counter affidavits, disputing the manner of the accident and the liability to pay the compensation amount.

5. The Tribunal, on an analysis of both oral and documentary evidence, held that the appellant suffered the injuries only on account of the accident that took place on 13.12.2010 and awarded a total compensation of Rs.3,25,000/- to be paid by the first respondent, the owner of the vehicle. Since the insurance company was exonerated from paying the compensation, the appellant has come forward with this appeal.

6.The learned counsel for the appellant vehemently contended that the Tribunal exonerated the liability of the insurance company on the ground that unauthorized passengers were permitted to travel in the vehicle. The learned counsel also contended that at the time of accident, the vehicle was under insurance cover and therefore, the Insurance Company was obligated to pay the compensation amount. The learned counsel submitted that the Tribunal ought to have adopted the principle of 'pay and recovery', since admittedly, the claimant sustained injuries in the accident and he would be aptly compensated.

7.The learned counsel for the respondents 2 and 4 fully supported the award of the Tribunal and prayed for dismissal of the appeal.

8.I have heard the learned counsel on either sides and perused the materials available on record.

9.The manner in which the accident has occurred is not in dispute. The vehicle in which, the appellant was traveling on the fateful day, was not permitted to carry passengers. Indeed, it was a vehicle used for carrying goods. The appellant has travelled only as a gratuitous passenger. The second respondent Insurance Company has let in evidence through the Junior Assistant of Regional Transport Office, Ranipet, who was examined as R.W.1, and the said witness clearly deposed that the driver of the offending vehicle was not licensed to drive the load auto. This is clearly a breach of violation of policy condition. The Legal Executive of the second respondent Insurance Company was examined as R.W.2. He has clearly deposed that though at the time of accident, the vehicle was under insurance policy cover, the vehicle was only registered as goods carriage vehicle and it was not permitted to carry unauthorized passengers. He demonstrated that the terms and conditions of the policy were violated and therefore, the Insurance Company is not liable to pay any compensation.

10. The driver of the offending vehicle took reverse of the vehicle in a rash and negligent manner and dashed against the vehicle parked on the road. The driver ought to have being vigilant, while taking reverse of the vehicle.

11.The learned counsel for the appellant vehemently contended that the Tribunal should have adopted the principal of 'pay and recovery'. The principal of pay and recovery will not at all apply to the facts of this case. The driver of the offending vehicle did not possess a valid driving license. Secondly, the vehicle was a goods carriage vehicle and it was not authorized to carry passengers. The driver of the offending vehicle without giving precaution, took reverse of the vehicle in a rash and negligent manner and hit against the vehicle parked on the road. Having done string of grave mistakes, the owner of the vehicle is only responsible for the same.

12. He further argued that the quantum of compensation is very much satisfied arrived at by the Tribunal. If the driver is only liable for the incident and the Insurance Company may be directed to pay the compensation and the same may be recovered from the owner of the offending vehicle, namely the first respondent.

13.This Court is not inclined to accept the prayer for the aforesaid mentioned reasons that it is a goods carriage and the victim is an unauthorized passenger. The appellant is at liberty to approach the competent Court and initiate appropriate proceedings to recover the compensation amount from the owner of the vehicle. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claim Tribunal,
II Additional District and Sessions Judge,
Ranipet, Vellore.

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

+1 cc to Mr.C.Paranthaman, Advocate Sr.No. 7099
+1 cc to Mr.C.Prabakaran, Advocate Sr.No. 6572
+1 cc to Mr.S.Arunkumar, Advocate Sr.No. 6735

C.M.A.No.1891 of 2014

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RMP(23/04/2021)

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