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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2332 & 2333 of 2014

and

M.P.Nos.1, 1 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
Branch Office, No.17-A, Krishnagiri Road,
Ranipet - 632 401,
Vellore District.

.. Appellant
(in both the appeals)

Vs.

1.Govindan

.. 1st Respondent
(in C.M.A.No.2332 of 2014)

1.Thirupathy

.. 1st Respondent
(in C.M.A.No.2333 of 2014)

2.D.Saravanan

.. 2nd Respondent
(in both the appeals)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common Judgment and Decree dated 29.11.2013 made in M.C.O.P.Nos.539 & 540 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
(in both the appeals)

For R1 : No appearance
(in both the appeals)

For R2 : Mr.J.Titus Enock
(in both the appeals)



C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

2. These Civil Miscellaneous Appeals have been filed against the common award dated 29.11.2013 made in M.C.O.P.Nos.539 & 540 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

3. Both the appeals arise out of the same accident and common award and hence disposed of by this common order.

4. The appellant is the 2nd respondent in M.C.O.P.Nos.539 & 540 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. The 1st respondent in both the appeals are the claimants in M.C.O.P.Nos.539 & 540 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. They filed the said claim petitions respectively claiming a sum of Rs.3,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 13.10.2009.

5. According to 1st respondent in both the appeals, on 13.10.2010 at about 00.10 hours, while they were travelling in the Eicher Lorry bearing Registration No.TN 23 AP 2171 belonging to 2nd respondent along with their Brinjal bags to sell the same at vegetable market on Krishnagiri - Chennai N.H.46 road near Bargur diversion road and Leprosy Rehabilitation Center, due to rash and negligent driving by the driver of the 2nd respondent's lorry at an uncontrollable speed, the rear tyre of the lorry got burst and due to the same, the lorry hit against the barricade and got capsized on the road and the 1st respondent in both the appeals sustained injuries all over the body. Immediately after the accident, the 1st respondent in both the appeals were taken to Government Head Quarters Hospital, Krishnagiri for first aid treatment. Thereafter, they were shifted to Private Nursing Home, Dharmapuri. Therefore, they filed the above said claim petitions claiming a sum of Rs.3,00,000/- each as compensation for the injuries sustained by them against the 2nd respondent and appellant, being the owner and insurer of the Eicher Lorry respectively.

6. The 2nd respondent-owner of the Eicher Lorry remained exparte before the Tribunal.

7. The appellant-Insurance Company filed separate counter statements in both the claim petitions and commonly denied all the averments made by the 1st respondent in both the appeals. According to the appellant, the accident has not occurred as alleged by the 1st respondent in both the appeals. According to



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appellant, due to poor maintenance of the lorry by the 2nd respondent, the tyre of the lorry got burst and also due to the rash and negligent driving by the driver of the lorry, the accident has occurred. Hence, the appellant is not liable to pay any compensation to the 1st respondent in both the appeals. The driver of the Eicher Lorry belonging to 2nd respondent was not possessing valid driving license and the 2nd respondent's lorry was not insured with the appellant at the time of accident. The 1st respondent in both the appeals have to prove their age, avocation, income, disability and period of treatment taken by producing valid documents. The injuries sustained by the 1st respondent in both the appeals are only simple in nature and the injuries mentioned in the claim petitions are not correct. In any event, the quantum of compensation claimed by the 1st respondent in both the appeals are highly excessive and prayed for dismissal of both the claim petitions.

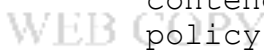
8. Before the Tribunal, the 1st respondent in C.M.A.No.2332 of 2014 was examined as P.W.1, 1st respondent in C.M.A.No.2333 of 2014 was examined as P.W.2, Dr.Sivakumar was examined as P.W.3 and Dr.T.V.Gandhi was examined as P.W.4 and 8 documents were marked as Exs.P1 to P8. The appellant-Insurance Company did not let in any oral and documentary evidence.

9. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the Eicher Lorry belonging to 2nd respondent and directed the 2nd respondent and appellant to jointly or severally pay a sum of Rs.30,000/- each respectively as compensation to the 1st respondent in both the appeals.

10. Against the said common award dated 29.11.2013 made in M.C.O.P.Nos.539 & 540 of 2013, the appellant-Insurance Company has come out with the present appeals.

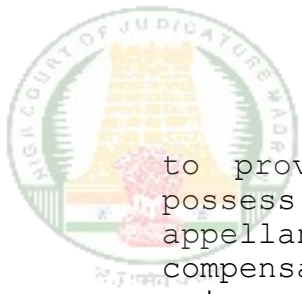
11. The learned counsel appearing for the appellant contended that at the time of accident, the driver of the Eicher Lorry belonging to 2nd respondent did not possess valid and effective driving license to drive the vehicle. The 2nd respondent has committed breach of policy condition by permitting the driver to drive the vehicle without license and to carry passengers in the goods vehicle. The 1st respondent in both the appeals traveled as unauthorized passengers by sitting on the goods in the open space. The Tribunal ought to have exonerated the appellant and fastened the liability on the 2nd respondent-owner of the Eicher Lorry and prayed for allowing both the appeals.

12. Though notice has been served on the 1st respondent in both the appeals and their names are printed in the cause list,



13. The learned counsel appearing for the 2nd respondent contended that at the time of accident there was valid insurance policy in force for the 2nd respondent's Eicher Lorry and the Tribunal rightly directed the appellant to pay the compensation to the 1st respondent in both the appeals and prayed for dismissal of both the appeals as against the 2nd respondent in both the appeals.

15. From the materials available on record, it is seen that it is the contention of the 1st respondent in both the appeals that on 13.10.2010 at about 00.10 hours they traveled along with the Brinjal bags from their field to Arcot to sell the same in the market in the offending vehicle. The driver of the Eicher Lorry drove the same in a rash and negligent manner and due to the same, the rear tyre of the Eicher Lorry got burst and the lorry capsized. Due to the said impact, the 1st respondent in both the appeals fell down from the lorry, suffered injuries and they filed the above said claim petitions claiming compensation respectively. In support of their case, they examined themselves as P.W.1 and P.W.2 and marked F.I.R. as Ex.P1. On the other hand, it is the case of the appellant that the 2nd respondent-owner of the lorry has not insured the lorry with the appellant and the driver of the lorry was not possessing driving license at the time of accident and the accident has occurred only due to poor maintenance of the lorry and generally denied all the averments in the claim petition. The appellant has not let in any oral or documentary evidence to prove their case. In the appeal, the appellant has raised grounds that 1st respondent in both the appeals are gratuitous passengers as they traveled in the goods vehicle sitting above the goods in open space and at the time of accident, 8 persons traveled in the goods vehicle. No such stand was taken by the appellant in the counter statement and no evidence was let in to prove that the 1st respondent in both the appeals were sitting on the goods and also 8 passengers traveled in the goods vehicle at the time of accident. The appellant is not entitled to raise new grounds without pleadings in the counter statement. Further the appellant has not let in any evidence in support of their case. The appellant in the grounds of appeal stated that 1st respondent in both the appeals were travelling by sitting over the goods. The Tribunal considering all the materials placed before it held that accident has occurred only due to rash and negligent driving by the driver of the 2nd respondent and appellant failed



to prove that driver of the 2nd respondent's lorry did not possess valid driving license and insurance policy issued by the appellant was in force and directed the appellant to pay the compensation. The appellant without any pleadings, now cannot raise new ground that 1st respondent in both the appeals are gratuitous passengers.

16. For the above reason, both the Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.30,000/- each together with interest and costs is hereby confirmed. The appellant is directed to deposit the respective award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.539 & 540 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. On such deposit, the 1st respondent in both the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.Titus Enock, Advocate SR.42779
+1cc to Mr.Krishnamoorthy, Advocate Sr.42849

C.M.A.Nos.2332 & 2333 of 2014

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srg 24/08/2021