

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2407 of 2014
and M.P. No. 1 of 2014

The Branch Manager,
M/s. IFFCO Tokio General Insurance Co. Ltd.,
Salem. .. Appellant/2nd Respondent

Vs.

1.Chinnakkal

2.K. Arunachalam .. Respondents/Petitioner and
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2014, made in M.C.O.P. No.95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur.

For Appellant : Mr. E. Rajadurai
for M/s. N. Vijayaraghavan

For Respondents : No appearance (For R1)
No appearance (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 30.01.2014, made in M.C.O.P. No.95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur.

2.The appellant is the 2nd respondent in M.C.O.P. No.95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her in the accident that took place on 06.08.2006.

3. According to the 1st respondent, on the date of accident, when she was standing in the Mecherry Bus stand along with others, after buying vegetables and groceries, the driver of the

Van bearing Registration No.TN-29-H-2706 belonging to the 2nd respondent called them to get into the Goods Vehicle to go to Penagaram. When the vehicle was nearing Mallikundham twin well, due to rash and negligent driving by its driver, the Goods Vehicle capsized and accident occurred. The accident occurred due to rash and negligent driving by the driver of the Goods Vehicle belonging to the 2nd respondent. In the accident, the 1st respondent suffered multiple and grievous injuries. For the injuries suffered by her, the 1st respondent claimed compensation against the 2nd respondent and appellant, as owner and insurer of the offending vehicle.

4.The 2nd respondent filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the 2nd respondent, the accident occurred when the front left tyre of the Goods Vehicle got burst and driver lost control. The accident did not occur due to negligence of the driver of the said vehicle. At the time of accident, only 7 persons traveled in the said Goods Vehicle. The Mechery Police has foisted false case on the 2nd respondent, stating that 21 persons traveled in the vehicle at the time of vehicle. The vehicle was insured with the appellant and hence, the appellant is liable to indemnify the 2nd respondent for the injuries sustained by the 1st respondent in the accident. In any event, the 1st respondent has to prove that the driver of the Goods Vehicle possessed valid driving license and the Goods Vehicle had valid Permit, Insurance Policy and Registration Certificate to ply on road. The 2nd respondent relied on the judgment of the Tribunal in M.C.O.P. Nos. 9 and 10 of 2007, wherein the appellant was directed to pay compensation to the claimants who sustained injuries in the same accident and prayed for dismissal of the claim petition as against him.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the 1st respondent has to prove that the driver of the Goods Vehicle possessed valid driving license and Goods Vehicle had valid Permit, Registration Certificate and was insured with the appellant at the time of accident. The appellant has issued insurance policy to the Goods Vehicle to carry only goods. The 2nd respondent, owner of the Goods Vehicle has violated the policy conditions by permitting the 1st respondent and other 20 passengers to travel in the Goods Vehicle. The accident occurred on 06.08.2006. The 1st respondent has filed the claim petition belatedly after 4 years, which proves that the 1st respondent did not sustain any injuries in the accident alleged to have occurred. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 5 documents as Exs.P1 to P5. The 2nd respondent examined himself as R.W.1 and marked 4 documents as Exs.R1 to R4. The appellant examined its Official as R.W.2 and marked 2 documents as Exs.R5 and R6.

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 Goods Vehicle belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.88,000/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8.Against the said award dated 30.01.2014, made in M.C.O.P. No.95 of 2010, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erroneously ordered pay and recovery, for the passenger who traveled in the Goods Vehicle. The Tribunal failed to appreciate that there was no coverage or liability for unauthorized passenger and no award can be passed, directing the Insurance Company to pay the compensation at the first instance and recover the same from the owner, when the Insurance Company is not liable to pay compensation. In any event, the 1st respondent sustained only simple injuries. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

11.Though the 2nd respondent has filed vakalat through counsel, the said vakalat was returned for not furnishing enrollment number and mobile number. Though the name of the counsel is printed in the cause list, there is no representation for the 2nd respondent, either in person or through counsel.

12.Heard learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

13.From the materials on record, it is seen that according to the 1st respondent, when she was waiting along with others in the Bus Stand after purchasing vegetables and groceries, the driver of the Van bearing Registration No.TN-29-H-2706 belonging to the 2nd respondent called them to get into the Goods Vehicle to go to Penagaram. According to the 1st respondent, she traveled along with 20 persons. From the FIR marked as Ex.P1, it has been mentioned that 20 persons traveled at the time of accident. The

2nd respondent, owner of the vehicle appeared before the Tribunal and contended through counsel, that only 7 persons traveled in the Goods Vehicle at the time of accident, but erroneously it has been mentioned that 20 persons traveled in the said vehicle. The accident has occurred due to rash and negligent driving by the driver of the Bus which came in the opposite direction. The driver of the Goods Vehicle applied sudden brake and tyre got burst and the vehicle capsized. He also deposed to that effect.

14.The appellant in the counter statement has stated that 20 persons traveled in the Goods Vehicle and the 1st respondent is only unauthorized passenger and appellant is not liable to pay the compensation to unauthorized passenger. The Tribunal framed an issue as to who is liable to pay compensation, but did not give any reason for directing the appellant to pay compensation at the first instance and recover the same from the owner. The Tribunal has not considered the contention of the appellant that policy issued by the appellant and admission of 2nd respondent as R.W.1 in the cross examination that only 3 persons can travel in the Goods Vehicle and he had paid premium only for 3 persons and not for 7 persons. The Tribunal without considering the materials placed before it in proper perspective, referring to the award passed in M.C.O.P.Nos.9 & 10 of 2007 and 142 of 2009, ordered pay and recovery, directing the appellant-Insurance Company to pay compensation at the first instance and recover the same from the owner of the vehicle. The said portion of the award is erroneous and is liable to be set aside and is hereby set aside. In view of the above materials, the appellant-Insurance Company is not liable to pay the compensation to the 1st respondent as she has traveled as unauthorized passenger and the compensation awarded by the Tribunal is payable only by the 2nd respondent, owner of the vehicle.

15.Since the award of the Tribunal is set aside with regard to liability of the appellant, the amounts awarded by the Tribunal is confirmed.

16.In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent, owner of the vehicle is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.95 of 2010. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the

award amount, lying in the credit of M.C.O.P. No.95 of 2010, if the entire award amount has already been deposited. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Mettur.

Copy To

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

C.M.A. No.2407 of 2014

VBA (CO)
GMY (27/04/2021)

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