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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.530 of 2014
and M.P. No.1 of 2014

M/s. National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Gobichettipalayam.

...Appellant / IIIrd Respondent

Vs.

1.Palanisamy ...1st Respondent / Petitioner

2.M.Vellingiri

3.K.P.Somasundharam ...Respondents 2 & 3 / Respondents 1 & 2
(R2 remained exparte
before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2012, made in M.C.O.P. No.222 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

For Appellant : Mrs. R. Sree Vidhya

For Respondents : Mr. Suganthan
for M/s. N. Manokaran (For R1)

No appearance (For RR2 & 3)

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 30.04.2012, made in M.C.O.P. No.222 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

2.The appellant is the 3rd respondent in M.C.O.P. No.222 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam. The 1st respondent/claimant filed



the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2005.

3. According to the 1st respondent, on the date of accident, he hired a Minidor Goods vehicle bearing Registration No.TN-36-E-9777, belonging to the 3rd respondent, to collect coconut from Sokkumaripalayam and Valayapalayam and traveled in the same vehicle. On the way, the driver and owner of the vehicle permitted some of the persons to travel in the Minidor Goods vehicle. While nearing a water tank at Chokkumaripalayam to Katticheviyur road, the 2nd respondent drove the vehicle in a rash and negligent manner and caused the accident. In the accident, the 1st respondent sustained severe injuries. The accident occurred only due to rash and negligent driving by the driver of the 2nd respondent and hence, filed the claim petition claiming compensation against the respondents 2, 3 and appellant as driver, owner and insurer of the offending vehicle.

4. The 2nd respondent remained exparte before the Tribunal.

5. The 3rd respondent filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the 3rd respondent, the accident did not occur when the Minidor vehicle hit other vehicle or capsize and it occurred only due to negligence on the part of the 1st respondent. In any event, the appellant is liable to pay compensation to the 1st respondent, since the vehicle is insured with them and prayed for dismissal of the claim petition as against the 3rd respondent.

6. 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 traveled as a gratuitous passenger in the Minidor Goods Vehicle in violation of policy conditions. On the date of accident, the offending vehicle was not insured with the appellant and hence, they are not liable to pay any compensation to the 1st respondent and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Doctor as P.W.2 and marked 14 documents as Exs.P1 to P14. The appellant examined two eye witness as R.W.1 and R.W.2 and marked 3 document as Exs.R1 to R3.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 2nd respondent, driver of



the Minidor Goods vehicle belonging to the 3rd respondent and directed the appellant as well as the respondents 2 and 3 to jointly and severally pay a sum of Rs.5,96,045/- as compensation to the 1st respondent.

WEB COPY 9.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 30.04.2012, made in M.C.O.P. No.222 of 2006, the appellant - Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that appellant is liable to pay compensation without properly appreciating the evidences marked by them. The offending vehicle is a Minidor three wheeler and there is no space to sit, except for the driver and at the time of accident, more than 15 persons traveled in the vehicle. The vehicle was used to carry passengers to attend the funeral and 1st respondent was also one among them. The 1st respondent himself has admitted that he traveled in the vehicle to go to the market and he was not owner of the goods or workman. In any event, such a risk is not covered for a person traveling in a Minidor Goods vehicle. The Tribunal failed to properly consider the award passed in M.C.O.P.Nos.155 to 158 of 2006, filed for the compensation, arising out of the same accident, on the file of the Motor Accident Claims Tribunal, Erode, though it was marked as Ex.R3. The Tribunal erroneously directed the appellant to pay compensation and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent hired the vehicle to collect Coconut and he is not a gratuitous passenger. On the way, the driver of the vehicle permitted other persons to travel in the Minidor Goods vehicle. Due to the negligent driving by the driver of the vehicle, the accident occurred. The appellant, as insurer of the vehicle is liable to pay compensation to the 1st respondent. The Tribunal considering the entire materials, held that 1st respondent is not a gratuitous passenger and directed the respondents 2 and 3 as well as the appellant to pay compensation to the 1st respondent. There is no error in the said finding of the Tribunal and prayed for dismissal of the appeal.

12.Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.



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14.It is the case of the 1st respondent that he hired a Minidor three wheeler to collect coconut and he was traveling in the vehicle. The 1st respondent admitted that he was going to collect coconut and therefore, he did not travel along with the goods at the time of accident. The 1st respondent has also not produced any evidence to show that he hired vehicle to collect coconuts. On the other hand, he admitted that in the enroute, the 2nd respondent driver of the vehicle allowed more persons to board in the vehicle. In the absence of goods in the vehicle, which is a goods vehicle and admission of 1st respondent that he traveled along with others in the goods vehicle, the finding of the Tribunal that appellant failed to prove that 1st respondent traveled as gratuitous passenger and fastening the liability on the appellant and directing the appellant along with respondents 2 and 3 to pay compensation to the 1st respondent is erroneous. The said erroneous finding is liable to be set aside and is hereby set aside. The appellant is not liable to pay compensation to the 1st respondent. The respondents 2 and 3 as driver and owner of the offending vehicle alone are liable to pay compensation.

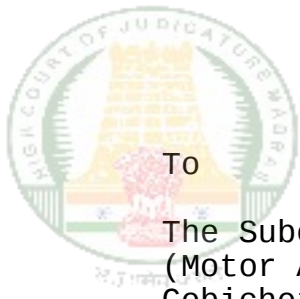
15.In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.5,96,045/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondents 2 and 3 are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.222 of 2006. 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 amount, lying in the credit of M.C.O.P. No.222 of 2006, if the entire award amount has already been deposited by them. It is made clear that if the 1st respondent has already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

gsa



To

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

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+1cc to M/s.R.Sreevidhya, Advocate SR.No.42363

+1cc to M/s.N.Manokaran, Advocate SR.No.42079

C.M.A. No.530 of 2014

MP(CO)
RVM(01/09/2021)