

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1720 of 2017
and
C.M.P.No.9331 of 2017

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
GI Plaza, Airport Road,
Yerwada, Pune – 411 006. ... Appellant

Vs.

1.Venkatesan

2.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Ramakrishna Road, Salem.

3.K.Nagarajan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 163 A of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2016 made in M.C.O.P.No.1137 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For R2 : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 22.01.2016 made in M.C.O.P.No.1137 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellant/Insurance Company is 3rd respondent in M.C.O.P.No.1137 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.08.2008.

3.According to the 1st respondent, on the date of the accident i.e. on 08.08.2008, the 1st respondent and his relatives were travelling in an Eicher Tempo with sundry goods and also vessels for preparing food etc. for the function. From the beginning itself, the driver of the Eicher Tempo was driving the Tempo in a rash and negligent manner at about 1.30 p.m, when the Tempo was nearing Elavambadi Velan Nagar Bus

Stop in Tiruvannamalai – Neeppathurai road, TNSTC bus belonging to the 2nd respondent which was coming from Neeppathurai to Singarapettai side in a rash and negligent manner and all of a sudden stopped in the middle of the road, which was not anticipated by the driver of the Eicher Tempo and he immediately applied sudden brake. As a result of which, unfortunately, the tempo slightly touched the body of the bus. The accident has occurred only due to rash and negligent driving by the drivers of both Tempo and the bus. In the accident, the 1st respondent sustained grievous injuries and therefore, he filed the above claim petition claiming compensation.

4.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the 3rd respondent did not possess valid driving license at the time of the accident. The 1st respondent has travelled as gratuitous passenger and hence he is not entitled to claim any compensation from the appellant. The accident had occurred only due to the fault of the bus driver of TNSTC since he suddenly stopped the bus in the middle of the road. The occupation and income of the injured/claimant are denied and prayed for dismissal of claim petition.

5.Before the Tribunal, the 1st respondent, examined himself as P.W.1 and one Dr.T.V.Gandhi was examined as P.W.2 and marked five documents as Exs.P1 to P5. On the side of the 2nd respondent/Transport Corporation, one Thamizharasu was examined as R.W.1, but no document was marked. On the side of the appellant/Insurance Company, one Hariprasath was examined as R.W.2 and marked two documents as Exs.R1 to R2.

6.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 Eicher Tempo belonging to the 3rd respondent and directed the appellant/Insurance Company to pay a sum of Rs.78,000/- as compensation to the 1st respondent at the first instance and then recover the same from the 3rd respondent.

7.Challenging the said award dated 22.01.2016 made in M.C.O.P.No.1137 of 2008, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

8.The learned counsel for the appellant/Insurance Company contended that the Tribunal having held that the 1st respondent travelled in the goods vehicle contrary to the policy conditions erred in ordering pay and recovery. The Tribunal ought to have exonerated the appellant and directed the 3rd respondent to pay compensation and prayed for allowing the appeal.

9.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

10.The 2nd respondent/Transport Corporation contended that the Tribunal dismissed the claim petition against the 2nd respondent/Transport Corporation. The 2nd respondent is unnecessary party in the appeal and prayed for dismissal of the appeal against the 2nd respondent.

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11.Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the 2nd respondent/Transport Corporation and perused the materials available on record.

12.The only issue to be decided in the appeal is whether the Tribunal is right in directing the appellant to pay compensation at the first instance and then recover the same from the 3rd respondent.

13.From the materials available on record, it is seen that it is admitted case of the 1st respondent that he alongwith others travelled in a goods vehicle and sustained injuries and under Section 147 of the Motor Vehicles Act, the Insurance Company is not liable to pay compensation. In the present case, the 1st respondent and others travelled in the goods vehicle for ceremony. The contention of the 1st respondent that he travelled along with goods for preparation of food was not proved by the 1st respondent. The Tribunal, considering the materials on record, has rightly held that the 1st respondent travelled in the goods vehicle in violation of policy condition since 3rd respondent, who is the owner of the vehicle had permitted the persons to travel in

the goods vehicle. Having held so, the Tribunal erred in ordering pay and recovery. It is well settled that the Insurance Company is not liable to pay compensation to the passengers who travelled in the goods vehicle as they are gratuitous passengers. Considering the materials on record in its entirety and the judgment of Hon'ble Apex Court and this Court, the liability to pay the award amount by the appellant and recover the same from 3rd respondent as held by the Tribunal, is alone set aside and the 3rd respondent is liable to pay compensation awarded by the Tribunal.

14.It is made clear that the appellant is entitled to withdraw the amount deposited by them and the 3rd respondent is held liable to pay the award amount to the 1st respondent.

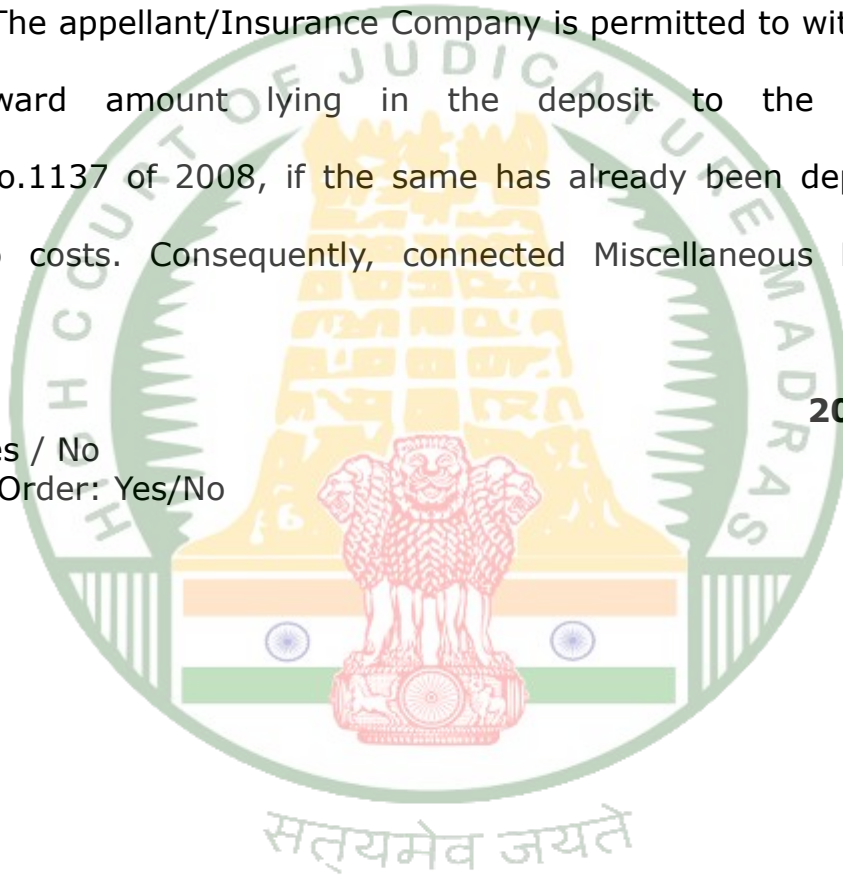
15.In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award directing the appellant to pay the compensation to the 1st respondent and the compensation awarded by the Tribunal is confirmed. The 3rd respondent/owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a

period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the entire award amount lying in the deposit to the credit of M.C.O.P.No.1137 of 2008, if the same has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

20.01.2020

Index : Yes / No
Speaking Order: Yes/No

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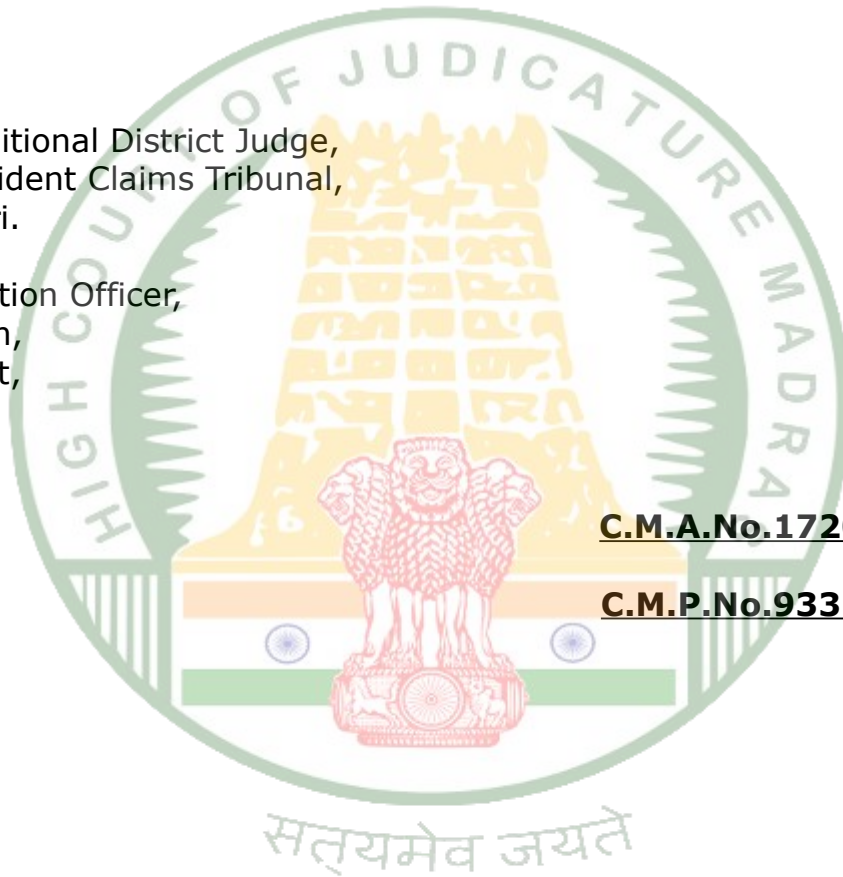
V.M.VELUMANI,J.

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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



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