

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

C.M.A.No.2353 of 2017
and C.M.P.No.12628 of 2017

Branch Manager
United India Insurance Company Ltd.,
Ranipet.

... Appellant/Respondent - II

Vs

1. Venkatesan,
S/o.Sangu,
Mummuni Village,
Vandhavasi Taluk.

... Respondent-1/ Petitioner

2. Mrs. Devi,
W/o. Murthy,
No.59, Kottai New Colony,
Vandhavasi Town

...Respondent - II/ Respondent - I

Prayer:- Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, Judgment and Decree passed in M.C.O.P.No.121 of 2006 on 20.04.2016 on the file of the learned Motor Accident Claims Tribunal at Cheyyar, Thiruvannamalai District.

For Appellant : Mr. J.Chandran

For Respondents : Mr. S.Makesh (For - R1)
No Appearance (For - R2)

J U D G M E N T

Challenging the judgment and decree dated 20.04.2016 passed by the Motor Accidents Claims Tribunal, Cheyyar, Thiruvannamalai District in M.C.O.P.No.121 of 2006, the appellant / Insurance company has preferred the present Civil Miscellaneous Appeal.

2. The case in brief is as follows:

On the fateful day, i.e., on 07.02.2006 one Venkatesan (claimant) was traveling in the lorry bearing Reg.No.TN01-2885 belonging to the second respondent and insured with the appellant / Insurance Company. The lorry was loaded with items

relating to marriage. When the vehicle was proceeding near Vanathu Christian Church, Uthramerur Road, the driver of the lorry applied a sudden break and due to the same the claimant, who was the cleaner of the lorry was thrown away from the lorry. Due to the said impact, he sustained grievous injuries and his lungs have been torn. Claiming that the accident had happened only due to rash and negligent driving of the driver of the lorry, the claimant / appellant has filed a claim petition claiming compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,46,000/- with interest at 7.5% pa from the date of petition. Aggrieved over the same, the appellant / insurance company has come up with this appeal.

3.The learned counsel for the appellant insurance company submitted that the deceased had travelled in the lorry (goods carrying vehicle) as gratuitous passenger, in violation of the policy conditions and hence, the appellant / Insurance company is not liable to pay any compensation. The learned counsel also submitted that the evidence of R.W.1-Jayapal, R.W.2-Raja, along with Ex.R-1-Investigation Report reveals that the policy covers risk of only third parties and denied the liability for unauthorized passenger / trespasser / gratuitous passenger. He further submitted that the findings arrived by the Tribunal show that the assessment is purely on its discretion rather than on the basis of either oral or documentary evidence available on record.

4.Per contra, the learned counsel for the first respondent / claimant submitted that the Tribunal, after looking into the oral and documentary evidence adduced by both parties, has rendered its findings on negligence and liability on the appellant insurance company and awarded the just compensation and hence the same do not call for any interference at the hands of this Court.

5.Heard both sides and perused the records.

6.It was put forth on the side of the appellant / Insurance company before the Tribunal that the claimant had travelled in the vehicle as gratuitous passenger, in violation of the policy conditions and hence, they are not liable to pay any compensation to the claimant. Considering the materials and evidence on record, the Tribunal has accepted the said contention put forth on the side of the Insurance Company and taking note of the fact that the lorry was insured with the appellant Insurance Company, the Tribunal has ordered the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the lorry, on the ground of violation of policy conditions on the part of the

owner of the lorry. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

7.As regards the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, Discharge Summary issued by the Government Stanley Hospital and all other aspects in a proper perspective, assessed the percentage of disability at 30% and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

8.Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the entire compensation amount with interest and costs, as awarded by the Tribunal, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the respondent/claimant through RTGS within a period of one week therefrom. Thereafter, the Insurance Company shall proceed against the owner of the lorry, the second respondent herein, to recover the compensation amount.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Motor Accidents Claims Tribunal,
Cheyyar, Thiruvannamalai District.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai-104.

C.M.A.No.2353 of 2017

SR(CO)
RMP(26/04/2021)