IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3295 of 2017
and
C.M.P.No.20810 of 2017

The Manager,
The Oriental Insurance Company Limited,
Motor Third Party Claims Office,
Oriental House, T.P.Hub, 2^{nd} Floor,
Prakasam Salai,
Chennai - 600 104 .. Appellant/ 2nd Respondent

Vs.

1.K.Mani .. 1st respondent/ Claimant
2.S.Selvamani ..2nd respondent/ I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.11.2016 made in M.C.O.P.No.88 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Kanchipuram.

For Appellant : Mr.D.Bhaskaran

For Respondents: R1 - Mr.M.Sivakumar
R2 - No appearance

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 05.11.2016 passed in M.C.O.P.No.88 of 2012.

2. The appeal on hand is filed, mainly on the ground that the claimant was an unauthorized passenger in a Goods vehicle and therefore, the Insurance company is not liable to pay compensation.

3. The accident occurred on 09.05.2011 at about 11.30 p.m Near Walajabad Petro bunk on the Chengalpet to Kanchipuram Highway Road.

4. The claimant sustained injuries and for the injury, he had taken treatment for about 4 days. The Tribunal adjudicated the issues with reference to the claim petition and arrived a conclusion that the claimant could able to establish the factum regarding the accident. However, the FIR, Ex.P1 reveals that the claimant was travelling in an unauthorized passenger in the Eicher Van bearing Reg.No.TN 21 K 7999. The Tribunal categorically made a finding that the claimant was a gratuitous passenger and there is no permit for the passengers to travel in the goods vehicle, more specifically, Eicher Van in the present case. The relevant findings in this regard are extracted hereunder:

> "6.......The FIR has been marked as Ex.P1. It has been alleged in the complaint that Purushothaman and his father had boarded the Eicher van and nearby the petrol bunk, the Eicher van driver had put diesel for the vehicle, the driver had driven the vehicle in a rash and negligent manner as a result of which his father fell down, then he has taken his father to the hospital by using an Ambulance. The FIR has been marked as Ex.P1. This Ex.P1 reveals that the petitioner is an unauthorized passenger in the Eicher van bearing Reg.No.TN 21 K 7999. The Insurance policy of the 1st respondent's vehicle covers the period of accident. As per the policy, the vehicle has to be used only for carriage of goods and not for use of passenger. The petitioner is an unauthorized passenger in the vehicle. The petitioner has sustained injuries as revealed from Ex.P2. As per Section 147 of the Motor Vehicle Act, the owner of the good or his authorized representative, are covered by the policy of insurance in respect of goods vehicle. Insurance company has no liability with respect to the passengers. The owner of the vehicle is liable to satisfy the decree. So, the 2nd respondent is liable to pay the compensation arrived which in turn has to be recovered from the 1st respondent. The Accident Register copy reveals that the petitioner has sustained simple injuries. Further, Doctor has also not been examined to prove that the injuries sustained by the petitioner is grievous in nature. Hence, this Court can only conclude that the injuries sustained by the petitioner is simple in nature. Hence, this Court deems it fit to grant a sum of Rs.25,000/- as over all compensation to the petitioner towards disability, extra nourishment, medical expenses, pain and sufferings and the points are answered accordingly."

5. Though the Tribunal arrived a conclusion that the claimant was an unauthorised passenger and there is no permit for passengers to travel in the Eicher Van, erroneously fixed the liability on the Insurance company. This apart, the Tribunal has arrived a conclusion that the Insurance company has no liability with respect to the passengers. Further, it is found that the owner of the vehicle is liable to satisfy the decree. When the Tribunal categorically made a finding that the Insurance company has no liability and the owner of the vehicle is liable to satisfy the decree erroneously, passed the decree against the insurance company to pay the compensation and recover the same from the owner of the vehicle.

6. When there is a competent violation of the permit conditions and policy and in the absence of any contract, there is no question of ordering Pay and Recovery. Pay and Recovery under Section 149(4) can be ordered only in certain circumstances, wherein there are certain violations of the policy conditions. But in the present case, there is no coverage at all. When the terms and conditions are unambiguous and there is no coverage of policy, then the Tribunal also arrived a conclusion that the Insurance company is not liable to pay compensation, then the Tribunal has erroneously passed the decree to pay the compensation and recover it from the owner of the vehicle. Such an order is perverse and not in consonance with the principles in the matter of dealing with the unauthorised passengers.

7. Accordingly, the judgment and decree dated 05.11.2016 passed in M.C.O.P.No.88 of 2012 is quashed and consequently, C.M.A.No.3295 of 2017 stands allowed. No costs. The appellant / Insurance company is permited to withdraw, whatever the amount already deposited with accrued interests by filing an appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
The Subordinate Judge,
Kanchipuram.

1 cc to Mr.C. Prakasam, Advocate, Sr. 22115
1 cc to MR.D.Bhaskaran, Advocate Sr. 21507

C.M.A.No.3295 of 2017

VD (CO)
kk 28/12