



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.12.2020**

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)NO.1252 of 2009

and

M.P(MD)No.4 of 2009

The Branch Manager,
The Oriental Insurance Company Limited,
Chennai-34. :Appellant/Second Respondent

.vs.

1.A.Chinnapillai :First Respondent/Petitioner

2.A.Saravanan :Second Respondent/First Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.177 of 2007, dated 31.07.2008, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant :Mr.K.Bhaskaran

For Respondent-1 :Mr.P.Arumugam

For Respondent-2 :No appearance

JUDGMENT

Questioning the award passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam passed in M.C.O.P.No.177 of 2007, dated 31.7.2008, the Insurance Company has filed this appeal.

2.The claim petition was filed by the first respondent herein seeking compensation of Rs.4 lakhs on the ground that on 22.09.2005, he suffered injuries in a motor Vehicle accident. It is his case that on 22.09.2005, he engaged a mini door auto bearing Registration No. TN 49 T 9717 belonging to the first respondent for the purpose of sale of plaintain leaves.The claimant and his son were travelling in the auto from Andimadam to Viruthatchalam, as owner of the goods. It is alleged that the driver of the auto drove



the vehicle very rashly and negligently and hence, the vehicle was capsized. In the impact, both of them suffered injuries and a criminal case was registered against the driver of the auto in Karuvepilakurichi Police Station in Crime No.119 of 2005. The said auto is insured with the appellant Insurance Company.

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3.In the counter filed by the appellant, the averments contained in the claim petition were denied as false. It is stated that the claimant is an unauthorised passenger in a goods vehicle and the same is violation of the Motor Vehicle Rules and policy condition. It is also stated that there is no valid driving licence for the driver of the auto at the time of accident and the claim is too high and exorbitant.

4.In order to prove the case, the claimant examined himself as P.W.1 and Dr.Jababalan as P.W.2 and Ex.P1 to Ex.P6 were marked. On the side of the respondents, one Krishnan was examined as R.W.1, but no documentary evidence was marked.

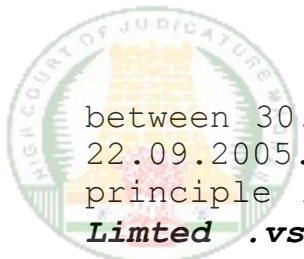
5.After considering the evidence adduced by both the parties, the Tribunal held that the driver of the auto was negligent and awarded compensation of Rs.65,000/- along with interest at the rate of 7.5% pa., Aggrieved over the said award, the present appeal has been filed.

6.Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.P.Arumugam, learned counsel appearing for the first respondent. Though notice has been served on the second respondent and name also printed in the cause list, none appears on behalf of him.

7.This is a case of injury.According to the claimant, when he travelled in a mini door auto along with goods (Plaintain leaves), the vehicle capsized and he sustained injury. But it is the case of the appellant that the claimant was a gratuitous passenger in a goods vehicle and hence no liability can be fastened on them. It is also contended that the vehicle has no insurance policy and hence the claim cannot be ordered on the basis of the Cover Note.

8.The claimant has narrated the manner of accident when he was examined as P.W.1. Ex.P1 is the First Information Report, in which, it has been specifically stated that he along with his son travelled in the mini door auto along with goods(plaintain leaves) and at that time, the accident had taken place. On the basis of the evidence of P.W.1 and Ex.P1, the Tribunal came to the conclusion that the accident had taken place only due to the rash and negligent driving of the driver of the mini door auto.

9.Next, while dealing with the liability of the Insurance Company to satisfy the award amount, the Tribunal found that the
<https://www.mca.gov.in> services to paid Rs.4,439/- towards premium for the period



between 30.4.2005 and 29.3.2006 and the accident had taken place on 22.09.2005. Ex.P4 is the Cover Note. The Tribunal following the principle laid down **1998 ACJ 1248(The Oriental Insurance Company Limited .vs. Mailupelli Aremah and others)** and **2002 ACJ 1061(The Oriental Insurance Company Limited .vs. White Rose and others)** made the Insurance Company liable to satisfy the award. In the above discussions, it has been held that Certificate of Insurance includes the Cover Note and hence, the Insurance Company cannot escape from its liability.

10.In the matter on hand, it is not disputed that the owner of the mini door auto paid Rs.4439/- towards premium for the period between 30.4.2005 and 29.3.2006 and the accident occurred on 22.9.2005 while the policy was in force. In the light of the above facts, the Tribunal has rightly held that the Insurance Company is liable to pay the compensation. I see no illegality or irregularity in the finding of the Tribunal.

11.With regard to the quantum, P.W.2-Doctor gave evidence stating that the claimant sustained fractures and his disability was assessed at 30%. Ex.P6 is the Disability Certificate. It is also seen that the claimant had spent Rs.1500/- towards medical expenses. So taking note of the above facts, the Tribunal has awarded Rs.65,000/- with interest at 7.5% p.a. The finding of the Tribunal is based on evidence and no ground is made out to over-turn the said finding. In view of the above the award of the Tribunal is confirmed

12.Accordingly, the Civil Miscellaneous Appeal stands dismissed. It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount has already been deposited to the credit of the claim petition. The claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Thanjavur at Kumbakonam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1cc to Mr.K.Bhaskaran, Advocate Sr.No.26560

**JUDGMENT MADE IN
C.M.A(MD)No.1252 of 2009**

17.12.2020

KMV(CO)

NR (18/01/2020) 4P : 5C