BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.249 of 2009

National Insurance Company Limited,
Branch Office No.1, Trichy,
Through its Branch Manager. : Appellant/2nd Respondent

Vs.

1.Pechimuthu : 1st Respondent/Petitioner
2.S.S.Dhas : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the order and decree dated 11.12.2007 passed in M.A.C.O.P.No.108 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Tenkasi to allow this appeal with cost.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.D.Venkatesh
For R2 : N.A

JUDGMENT

This appeal is directed against the judgment and award passed by the Motor Accidents Claims Tribunal, Principal Sub-Court, Tenkasi in M.A.C.O.P.No.108 of 2005, dated 11.12.2007.

2. The first respondent filed a claim petition seeking compensation of Rs.5,00,000/-. It is his case that the claimant was working in Vijay Milk Company as a driver and thereby, he was earning Rs.6,000/- per month. While so, on 06.02.2005 after delivering Milk at Manachanallur and completing his work, he had a dinner at Vadakipatti and waiting at Manachanallur Bus stop. At that time, the van belonging to Vijay Milk Company bearing Registration No.TN-48-A-3955 came to spot and he along with another person Rajendran @ Ravichandran travelled in the van. He would further state that the driver of the van drove the vehicle in a rash and negligent manner and lost his control and hit against the Tamarind tree, in which, the claimant sustained fracture in both legs and injuries all over the body. He would further state that he spent about Rs.2,00,000/- for medical expenses alone.

3. The appellant/Insurance Company filed a counter stating that the claimant was an un-authorised passenger in the goods carriage. Since the policy condition has been violated, they are not liable to indemnify the insured.

4. It is seen from the records that the claimant examined himself as P.W.1 before the Tribunal. The claimant has taken a contradictory stand and deposed that at the time of accident he travelled in the van as a driver. The Tribunal having found that the offending vehicle had policy coverage on the date of accident and also paid additional premium for other person, fixed the liability on the Insurance Company to pay the compensation of Rs.2,15,860/-.

5. Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant would submit that in the claim petition, the claimant categorically stated that he travelled as a passenger in the goods carriage, but the Tribunal accepting the evidence adduced by the claim petition, fixed the liability against the Insurance Company.

6. The learned counsel appearing for the appellant placing reliance on the decisions reported in ***2003 ACJ 1, 2003, 2003 ACJ 468, 2003 ACJ 1931, 2005 ACJ 721, 2005 ACJ 1801 and CDJ 2007 SC 187, 2004 (2) TNMAC 146 (DB) and 2005 ACJ 913*** contended that the appellant Insurance Company cannot be mulcted with liability for the claim arising out of the passenger travelled in the goods carriage.

7. Per contra, Mr.D.Venkatesh, learned counsel appearing for the claimant/first respondent would argue that even though in the claim petition it was wrongly stated as if the claimant travelled as a passenger, however, in the evidence he has categorically deposed that he was travelling an acting driver at the time of accident. Therefore, much impartance cannot be given to the averments made in the claim petition and justified the award passed by the Tribunal.

8. I find force in the submission of the learned counsel appearing for the appellant. Perusal of the averments in the claim petition shows that the claimant travelled as passenger in the goods vehicle. In the decision cited by the learned Counsel for the Appellant it is categorically held that if the injured claimant is found to be gratituous passenger in goods vehicle, liability of the Insurance Company has to be exonerated and even the principle 'Pay and Recovery' cannot be applied. Hence, I am of the opinion that the appellant Insurance Company is entitled to succeed in the appeal. Insofar as the quantum is concerned, the award of the Tribunal is confirmed and only with regard to liability of the Insurance Company alone is set aside. It is open to the claimant to recover the amount awarded by the Tribunal from the owner of the vehicle.

9. Accordingly, this Civil Miscellaneous Appeal is allowed.

10. If any amount is deposited by the Insurance Company before the Tribunal, the same shall be refunded to the appellant/Insurance Company, if the same is not withdrawn by the first respondent/claimant. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Judge,
Motor Accidents Claims Tribunal,
Principal Sub-Court, Tenkasi.

2.V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.25819

C.M.A(MD)No.249 of 2009

15.12.2020

KMV(CO)
NR (19/01/2020) 3P : 5C