



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.540 of 2009
and
M.P(MD)No.1 of 2009

Cholamandalam MS General
Insurance Company Ltd.,
Dare House 2nd Floor,
234, NSC Bose Road,
Chennai-1.

: Appellant/2nd Respondent

Vs.

1.C.Solaimalai : 1st Respondent/Petitioner
2.S.Akbar Hussain : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order dated 15.12.2008 made in M.C.O.P.No.941 of 2005 on the file of Motor Accident Claims Tribunal (III Additional Subordinate Judge's Court) at Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : No appearance

For R2 : Dismissed vide Court Order
dated 21.06.2017.

JUDGMENT

This appeal has been preferred against the award passed by the Motor Accidents Claims Tribunal (III Additional Subordinate Judge's Court) at Trichy made in M.C.O.P.No.941 of 2005, dated 15.12.2008, where the first respondent herein claimed total compensation of Rs.1,80,000/- and the Tribunal has awarded a sum of Rs.56,500/-.

2. Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant.



3. Though the first respondent has been served and his name is printed in the cause list, there is no representation on his behalf. As against the second respondent, the appeal was dismissed by order dated 21.06.2017.

4. The case of the claimant in brief is that on 27.08.2004 he along with his family had gone to Samayapuram for celebrating ear boring function for his younger daughter. They engaged the mini door pickup van to go to temple and when the van nearing Alanthur power Grid on Madurai-Trichy road at about 9.30 a.m., it capsized due to rash and negligent driving by driver of the van. In the said accident, he suffered multiple injuries and he was taken to Trichy Government Hospital and discharged on 29.08.2004. He further stated that he was taken treatment in a Private Hospital also.

5. The claim petition was contested by the appellant/Insurance Company mainly on the ground that the claimant was a gratuitous passenger in the goods vehicle and hence, the Insurance Company is not liable to pay compensation to the claimant.

6. Before the Tribunal both parties adduced oral and documentary evidence and on appreciation of evidence, the Tribunal found that the claimant was a passenger in a goods vehicle. However, relying upon a decision of the Hon'ble Supreme Court in **National Insurance Co., Ltd., Vs. Baljit Gaur** reported in **2004(1) TNMAC (S.C) 1** directed the Insurance Company to pay the compensation amount to the claimants and thereafter, recover from the owner of the vehicle.

7. The learned counsel appearing for the appellant would argue that this appeal is filed primarily questioning the direction issued by the Tribunal to pay the compensation amount to the claimants and thereafter, recover from the owner of the vehicle and there is no dispute with regard to quantum.

8. It is relevant to note that though the appeal has been filed challenging the liability, admittedly against the owner of the vehicle, the appeal was already dismissed by this Court in the year 2017. Therefore, without hearing the owner of the vehicle, no adverse order can be passed against him.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed confirming the award passed in M.C.O.P.No.941 of 2005, dated 15.12.2008 by the Motor Accidents Claims Tribunal (III Additional Subordinate Judge's Court) at Trichy. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/Claimant is permitted to withdraw the award amount by



making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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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 III Additional Subordinate Judge,
Motor Accidents Claims Tribunal
Trichy.
- 2.The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.25820

C.M.A(MD)No.540 of 2009

15.12.2020

VB (18.01.2021) 3P 5C