IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA.No.2311 of 2010

National Insurance Co. Ltd.,
Bypass Road
Dharmapuri 636 701. ...Appellant/2nd Respondent

Vs

1.Kannammal
2.D.Yusuff ...Respondents/Petitioner/
1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.04.2007 made in M.C.O.P.No.513 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.S.Arun Kumar

For Respondents : R1- No appearance
R2- Notice unserved

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 26.04.2007, made in MCOP.No.513 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

2. According to the first respondent herein/claimant that on 27.05.2003, the claimant herein and others were travelling on the mini lorry bearing Reg.No.KA19 5536, after unloading mangoes. When the vehicle was proceeding on the Irumathur Main Road, at about 06.00 p.m., the driver of the mini lorry drove it at high speed in a negligent manner and swerved the vehicle in order to avoid collusion with a bus coming in the opposite direction. As a result of which, the the mini lorry capsized and the claimant sustained injuries. Hence, the claim petition in MCOP.No.513 of 2005, had been filed before the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri, against the owner and insurer of the mini lorry

bearing Reg.No.KA19 5536. Hence, the first respondent/claimant made a claim for a sum of Rs.3,00,000/- as compensation.

3. The appellant/Insurance Company filed a counter statement and resisted the claim petition. The Insurance Company denied the manner of accident, age, occupation, income and nature of injuries and mode of treatment of the claimants. It was submitted that about 50 persons had travelled in the mini lorry as unauthorized passengers including that of the the claimant herein and other claimants. It was submitted that the owner of the vehicle had paid premium only for six employees including the driver and cleaner.

4. Before the Tribunal, the first respondent/claimant examined herself as PW1 and Dr.Thiruvenkadam was examined as PW2 and 7 documents were marked as Exs.P1 to P7. On the side of the appellant/Insurance Company, one Thimmaraj was examined as RW1 and Insurance Policy was marked as Ex.R1.

5. On considering the evidences of the claimant and the Doctor, the Tribunal had awarded compensation of a sum of Rs.1,63,817- with interest 7.5% per annum. Aggrieved by the said award, the Insurance Company has filed the above appeal.

6. Challenging the said award, the appellant/Insurance Company preferred the present appeal before this Court.

7. The learned counsel for the appellant/Insurance Company submits that more than 15 unauthorized persons had travelled on the goods vehicle and as such the owner of the vehicle had violated the policy and permit conditions and therefore, the Insurance Company is not liable to pay compensation. The submission made by the claimants that they had travelled as load men had not been proved by substantial evidence. The very competent counsel for the Insurance Company further submits that totally seven claim petitions had been filed for the same accident, but premium has only been paid for six persons. Hence, the learned counsel expects the Court to set aside the award.

8. On verifying the factual position of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation.

9. This Court is of the further view that the first information report has been registered against the driver of the offending vehicle and subsequently charge sheet has also been filed against him. Therefore, negligence has been proved. As per

the contentions of the learned counsel for the Insurance Company, premium has been remitted to cover risk of six persons. But, before this Court, only five injured claimants had sought remedy. Therefore, the liability of the Insurance Company has also been decided as per the policy conditions. The compensation amount has been decided as per the Doctor's evidence and disability certificate. Therefore, the quantum of compensation had been assessed in an appropriate manner. Hence, this Court is not inclined to entertain the appeal.

10. In view of the above, this Court is of the view that there is no merit in this appeal and it is liable to be dismissed. Accordingly, this appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,63,817/- together with interest at the rate of 7.5% per annum is confirmed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.513 of 2005. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

dna
To

The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

COPY TO:
The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.S. Arunkumar, Advocate, Sr 7924.

CMA.No.2311 of 2010

AJS(CO)
LS(28/07/2021)