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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3126 of 2009
and M.P.No.1 of 2009

The New India Assurance Co. Ltd.,
No.7, Ramalinga Madalaya Street,
Gugai, Salem 636 006.

... Appellant

-vs-

1.Sengamalai

2.P.Murugesan
(2nd Respondent Exparte in lower Court
hence notice may be dispensed with)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.925 of 2004, dated 29.06.2009 on the file of the Motor Accidents Claims Tribunal, Additional District, Fast Track Court No.2, Salem.

For Appellant : Mr.E.Rajadurai

For Respondents: Mr.R.Neelakandan for R1
R2 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree in M.C.O.P.No.925 of 2004, dated 29.06.2009 on the file of the Motor Accidents Claims Tribunal, Additional District, Fast Track Court No.2, Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 10.02.2003 when the petitioner was traveling as a load man in tractor, the driver of the tractor drove the vehicle in a rash and negligent manner and due to the jolt the petitioner fell down in front of the tractor. Due to which he sustained multiple grievous injuries all over the body. Immediately he was rushed to a Private



Hospital at Attur and thereafter, he was shifted to United Hospital at Coimbatore. However, his right leg was amputated and he sustained 75% permanent disability. Hence the claim petition.

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4. Resisting the same, the second respondent filed a counter stating that the second respondent not at all liable to pay any compensation, since the petitioner is an unauthorized passenger in the tractor driven by the first respondent. The policy is not covered the petitioner under any head and as such the second respondent is not covered is not liable to be held for any compensation.

5. On the side of the petitioner P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P11 were marked. On the side of the second respondent R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal had fastened the negligence on the part of the rider of the Motor Cycle and awarded compensation for a sum of Rs.3,20,760/- (Rupees Three Lakhs Twenty Thousand Seven Hundred and Sixty only). Aggrieved by the same, the second respondent filed this Civil Miscellaneous Appeal.

6. The learned counsel for the appellant would submit that the claimant is an unauthorized passenger in the tractor. He is neither a coolie nor a load man and he is not entitled for any compensation. The policy does not cover any load man and the Tribunal has grossly erred in fastening the liability on the insurer, in a case where the victim was an unauthorized passenger on the tractor and he is not entitled for any compensation under the coverage of the policy under Section 140 of the Motor Vehicles Act.

7. Per contra, the learned counsel for the claimant would submit that the policy fully covered the coolie who accompanies the driver and the appellant is liable to pay compensation. The Tribunal rightly held that the compensation is payable by the second respondent.

8. Heard Mr.E.Rajadurai, learned counsel appearing for the appellant and Mr.R.Neelakandan, learned counsel appearing for the first respondent.

9. The appellant questioned only in respect of the liability for the reason the claimant admittedly travelled addition to the driver and when he was sit on mudguard of the tractor, he fell down and sustained injury. Therefore, his right leg was amputated and his disability was assessed at 75%.



10. On perusal of the policy which is marked by the appellant herein as Ex.R2 revealed that in respect of legal liability to driver coolies and paid premium of Rs.15/-. Therefore, the policy covered a driver and the coolie who travelled along with the driver. Therefore, the Tribunal rightly had fastened the liability on the respondents. Further, this Court finds no points for enhancing the compensation as awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District,
Fast Tract Court No.2,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.R.Neelakandan, Advocate, S.R.No.23978

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SR II(CO)
GN(18/11/2021)