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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.3360 of 2013 &
M.P No.1 of 2013

The Divisional Manager,
M/s National Insurance Co. Ltd.,
No.19, Officer's Line, I floor,
opp. to Lakshmi Theatre,
Vellore.

`...Appellant/2nd Respondent

Vs.

1. Parasuraman ...1st Respondent/Petitioner
2. Muniammal ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 04.10.2012 passed in M.C.O.P.No.285 of 2006 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant : Mr.J.Chandran

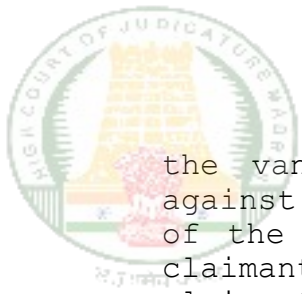
O R D E R

Aggrieved over the orders passed by the Tribunal, the Insurance company has filed the present appeal questioning the liability.

2. Totally six claim petitions have been filed before the Tribunal. Insofar as the present case is concerned, the claimant has filed a claim petition in MCOP No.285 of 2006 seeking compensation of Rs.30,000/- for the injuries sustained by him in a road accident that took place on 03.08.2004.

3. The brief case of the claimant is as follows:

On 03.08.2004, at about 12.00 p.m. the petitioner along with other persons was travelled as a coolie in a van bearing registration No.TN45-Y9529 along Thiruvannamalai-Polur Road and while nearing Kalasapakkam, Ladavaram koot road, the driver of



the van drove the vehicle rashly and negligently and dashed against a tamarind tree, thereby, the van capsized and in view of the same, two persons died and other persons including the claimant sustained fracture and injuries. According to the claimant, the rash and negligent driving of the driver of the van was the cause of accident and since the first respondent/ owner of the van insured her vehicle with the second respondent/ insurance company, both of them are liable to pay compensation to them.

4. The owner of the vehicle/ first respondent and the insurance company/ second respondent have contested the claim petition by filing their respective counter affidavit.

5. Before Tribunal, on the side of the claimants PW1 to PW7 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 and Ex.R2 were marked. As far as the present claimant is concerned, he was examined as PW1 and wound certificate was marked as Ex.P3.

6. After analysing the evidence on record, the Tribunal has awarded consolidated amount of Rs.10,000/- as compensation to the claimant for the injuries sustained by him in the above said road accident.

7. Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal, questioning their liability.

8. The learned counsel appearing for the appellant/ insurance company submitted that on the date of accident, totally 32 persons were travelled in the van as unauthorised passengers, which is the violation of the policy condition and as per the policy coverage, only 7 persons are permitted to travel in the van. He further submitted that since the claimant and the other persons have travelled as unauthorised passengers, the insurance company is not liable to pay compensation.

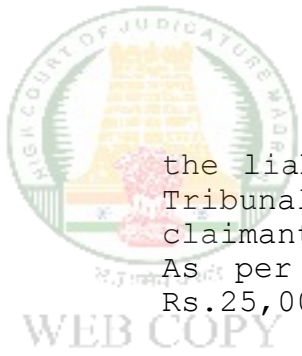
9. Heard the learned counsel for the appellant and I have perused the materials on record.

10. Notice to the second respondent/ owner of the van was not served.

11. Now the point for consideration is whether the insurance company is liable to pay compensation to the claimant.

12. POINT

The present appeal has been preferred only questioning



the liability and not against the quantum of compensation. The Tribunal has awarded a sum of Rs.10,000/- as compensation to the claimant for the simple injury sustained by him in the accident. As per law, under no fault liability, a minimum amount of Rs.25,000/- has to be awarded as compensation to the claimant.

13. Therefore, considering the fact that the claimant had sustained only simple injury and the compensation awarded by the Tribunal is a very meager amount and also the fact that despite sufficient opportunities given to the appellant, notice was not served on the owner of the van, this court cannot go into the issue of liability.

14. From the facts of the case, as per policy condition, only 7 persons are entitled for the compensation amount who have travelled in the van and no particulars have been filed before this Court that more than 7 persons have claimed compensation amount. In the absence of the said particulars and also considering the award amount of Rs.10,000/- and no notice was served to the second respondent and taking note of the distance of time, this Court will not wish to consider the grounds raised in the appeal. When a policy covers for 7 persons for travelling in the said van and in the absence of any particulars to prove the violation of policy condition, this Court is of the view that the appellant/insurance company has failed to satisfy this Court that they are not liable to pay compensation amount to the claimant. Hence, the first respondent/claimant is entitled to get the benefit of compensation amount as per the award passed by the Tribunal.

15. In the result,

(i) The civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

(ii) the appellant/insurance company is directed to pay the compensation of Rs.10,000/- along with interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit, less the amount if already deposited.

(iii) On such deposit being made by the insurance company, the claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar



mst/uma

To

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1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.
2. The Divisional Manager,
M/s National Insurance Co. Ltd.,
No.19, Officer's line,
I floor, opp. to Lakshmi Theatre,
Vellore.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.20663

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M.P.No.1 of 2013

KJ[co]
NSK 19/11/2021