



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2709 of 2019

Maria Joseph

...Appellant / Petitioner

Vs

1.Sakkaraiyas

2.The Chief Executive Claim Officer
Royal Sundaram Alliance Insurance
Company Limited

No.46, Whites Road, Chennai.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to direct the 2nd respondent/the insurer, to pay the award passed in the decree dated 07.01.2019 in M.C.O.P.No.344 of 2006 on the file of Motor Accident Claims Tribunal/Subordinate Judge, Gingee.

[Prayer amended vide Court order dated 18.07.2019 made in C.M.P.No.14336 of 2019 in C.M.A.No.2709 of 2019]

For Appellant : Mr.A.Sathishkumar
for Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mr.M.V.Seshachari

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for a direction to the 2nd respondent/Insurance Company to pay the compensation and for enhancement of compensation granted by the Tribunal in the award dated 07.01.2019 made in M.C.O.P.No.344 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Gingee.

2.The appellant is claimant in M.C.O.P.No.344 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Gingee. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.10.2006.



3. According to the appellant, on the date of accident i.e., on 11.10.2006 at about 14.30 hours, while he was travelling in the tractor belonging to the 1st respondent near Alambadi, for election canvass, the driver of the tractor drove the same in a rash and negligent manner, applied sudden brake, due to which, the appellant fell down, the tractor ran over him and thus the accident occurred. In the accident, the appellant sustained multiple injuries all over the body and therefore, filed the claim petition claiming compensation as against the respondents.

4. The 1st respondent, owner of the tractor remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company being insurer of the tractor did not file any counter statement.

6. Before the Tribunal, the appellant examined himself as P.W.1 and 15 documents were marked as Exs.P1 to P15. The respondents did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.9,06,400/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company as the appellant travelled in the said tractor as an un-authorised passenger.

8. The appellant has come out with the present appeal challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as for enhancement of compensation.

9. Though the learned counsel appearing for the appellant raised grounds alleging that the compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation, filed C.M.P.No.14336 of 2019 for amending the prayer directing the 2nd respondent to pay the award passed in the decree dated 07.01.2019 in M.C.O.P.No.344 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee. This Court by order dated 18.07.2019 ordered amendment of the prayer directing the 2nd respondent to pay the award amount passed in the decree dated 07.01.2019 in M.C.O.P.No.344 of 2006. In view of such amendment, the only question to be decided in this appeal is whether the 2nd respondent/Insurance Company is liable to pay compensation or not.



10. The learned counsel appearing for the appellant contended that the Tribunal failed to note that the 1st respondent remained exparte before the Tribunal and erred in directing the 1st respondent, owner of the tractor to pay compensation to the appellant. The tractor was insured with the 2nd respondent/Insurance Company. Therefore, the Tribunal ought to have ordered pay & recovery and prayed for a direction to the 2nd respondent/Insurance Company to pay compensation to the appellant.

11. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant travelled as an unauthorised passenger in the tractor and hence the Tribunal rightly dismissed the claim petition as against the 2nd respondent/Insurance Company and prayed for dismissal of the appeal.

12. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.

14. It is the case of the appellant that while he was travelling in the tractor for election canvass, the accident has occurred due to rash and negligent driving by the driver of the tractor. The Tribunal considered the case of the appellant and held that in the tractor, the passengers cannot travel and hence, the 2nd respondent/Insurance Company is not liable to pay compensation to the appellant, who travelled in the tractor as an unauthorised passenger. It is well settled that the passengers cannot travel in the tractor, it is meant only for driver and all other persons travelling in the tractor are only unauthorised passengers. The policy issued by the 2nd respondent does not cover the risk of unauthorised passenger travelling in the tractor. In view of the well settled law, there is no error in the award of the Tribunal dismissing the claim petition as against the 2nd respondent/Insurance Company and directing the 1st respondent alone to pay compensation to the appellant.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.9,06,400/- along with interest and cost is confirmed. The 1st respondent is directed to deposit the amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of



receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

kj

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Gingee.

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

+1cc to Mrs.C.Harini, Advocate SR.No.1660

+2ccs to Mr.C.Thangaraju, Advocate SR.No.1528

C.M.A.No.2709 of 2019

VBA(CO)
RVM(11/08/2021)