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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4511 of 2019
and CMP.No.25498 of 2019

National Insurance Company Limited,
Its Manager,
First Floor, Karthikeya Complex,
403-B-10, Mettur Main road,
Bhavani, Erode District.

..2nd Respondent Appellant

Vs.

1.Ashtalakshmi

...Petitioner/1st Respondent

2.N.Senthil Murugan

..1st Respondent/ 2nd
Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and award dated 13.02.2019 made in M.C.O.P.No.121 of 2016, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Erode District, Bhavani.

For Appellant : Mr.S.Vadivel

For Respondent : Ms.T.Gayathri (For R1)
for M/s.C.Kulanthaivel

No Appearance (For R2)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 13.02.2019 made in M.C.O.P.No.121 of 2016 on the file of the IV Additional District Court, (Motor Accidents Claims Tribunal), Erode District, Bhavani.



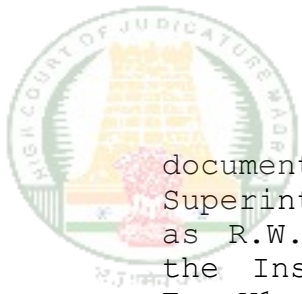
2.The appellant is the 2nd respondent in M.C.O.P.No.121 of 2016 on the file of the IV Additional District Court, (Motor Accidents Claims Tribunal), Erode District, Bhavani. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.11.2015.

3.According to the 1st respondent, on the date of accident, she was traveling in an Auto bearing Registration No.TN-36-J-3380 belonging to the 2nd respondent and driven by the 2nd respondent, towards Kavundapadi to Bhavani Road, Sulaimedu to deliver the goods to Maligai Shop. While nearing Annamar Kovil, the 2nd respondent without following traffic rules and regulations, on seeing a dog crossing the road, suddenly applied brake. Due to the said impact, the Auto capsized and thus, the accident occurred. In the accident, the 1st respondent suffered grievous and multiple injuries. The accident occurred only due to rash and negligent driving by the 2nd respondent, driver-cum-owner of the Auto. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner-cum-driver and appellant as insurer of the offending vehicle respectively.

4.The 2nd respondent, owner-cum-driver of the Auto, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the seating capacity of the vehicle involved in accident is one and admittedly, the 1st respondent traveled in the said vehicle along with the 2nd respondent/driver of the Auto at the time of accident. The 1st respondent traveled as gratuitous passenger/Non Fair Paying Passenger and hence, she is not entitled to claim any compensation on the policy of insurance issued to the said vehicle. Having filed the claim petition under Section 163 - A of the Motor Vehicles Act, the 1st respondent is not entitled to claim her monthly income as Rs.10,000/- per month, which amounts to Rs.1,20,000/- per annum. FIR was filed after two days of the accident and no records were furnished for the treatment taken at Saravana Hospital, Bhavani, which gives room for suspicion about genuineness of the accident. The 1st respondent has to prove the manner of accident, involvement of the said Auto in the accident, her age, avocation and income, treatment taken and injuries sustained, to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Dr.Madhuperiyasamy, as P.W.2 and marked 5



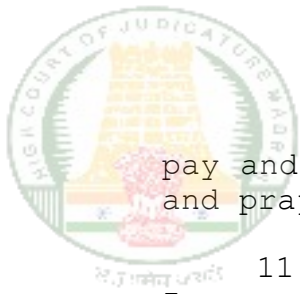
documents as Exs.P1 to P5. The appellant examined the Superintendent of the Motor Vehicle Inspector's Office, Bhavani as R.W.1 and their Administrative Officer as R.W.2 and marked the Insurance Policy as Ex.R1. Two documents were marked as Exs.W1 and W2. The disability certificate issued by the Medical Board was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the claim petition filed under Section 163-A of the Motor Vehicles Act is maintainable and awarded a sum of Rs.3,36,487/- as compensation to the 1st respondent and directed the appellant as insurer of the said vehicle to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8.To set aside the award of the Tribunal dated 13.02.2019 made in M.C.O.P.No.121 of 2016, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the seating capacity of the offending vehicle is only one i.e., for the driver alone. The Tribunal having accepted the contention of the appellant, ought to have dismissed the claim petition against the appellant on the ground that the 1st respondent traveled as unauthorized passenger. The Tribunal having appreciated the evidence of R.W.1 and R.W.2 examined by the appellant and document marked as Ex.R1, ought not to have held that the 1st respondent traveled along with the goods as owner and as such, it was only a violation of policy conditions. The Tribunal without any evidence and pleadings, suo-motu presumed that the 1st respondent traveled as owner of the goods and ordered pay and recovery, relying on the judgment of the Madurai Bench of this Court reported in 2015 (2) TN MAC 788 [New India Assurance Co. Ltd., Kovilpatti Vs. A.Manoharan]. The said judgment is not applicable to the facts of the present case. The appellant proved that the 1st respondent traveled only as unauthorized passenger. The Tribunal instead of exonerating the appellant, erroneously ordered pay and recovery and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent traveled along with the goods as owner, to deliver the goods to various shops. As per Section 147 (1) (b) of the Motor Vehicles Act, owner of the goods who traveled in the goods vehicle is covered under policy and hence, the appellant is liable to pay compensation. The Tribunal considering the oral and documentary evidence, held that the 1st respondent traveled as owner of the goods in the goods vehicle and following the judgment of the Madurai Bench of this Court reported in 2015 (2) TN MAC 788 cited supra, ordered



pay and recovery. There is no error in the award of the Tribunal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12. From the materials on record, it is seen that the 1st respondent has traveled in a three wheeler load Auto in which the seating capacity is only for the driver. No person can travel in the load Auto along with driver, sharing his seat. Admittedly, the 1st respondent traveled in three wheeler Auto along with the driver. The appellant filed Registration Certificate of the offending vehicle as witness document, Ex.W2 and examined the Superintendent of the Motor Vehicle Inspector's Office as R.W.1 and their Administrative Official as R.W.2 and proved that the seating capacity of the offending vehicle is only for the driver. The Tribunal considering the oral and documentary evidence let in by the appellant, held that the 2nd respondent, owner of the vehicle permitted the 1st respondent to travel in the three wheeler Auto along with the goods and violated the policy condition and 2nd respondent alone is liable to pay compensation to the 1st respondent. Having held so, relying on the judgment of this Court reported in 2015 (2) TN MAC 788 cited supra, the Tribunal directed the appellant to pay compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent. The ratio in the said judgment is not applicable to the facts of the present case. The facts of the case in the judgment reported in 2015 (2) TN MAC 788 cited supra relates to the person traveling in the load Auto. The seating capacity of the load Auto is two i.e., for driver and one passenger. The father-in-law of the claimant in that case traveled in the cabin, sitting along with the driver, the claimant and his brother-in-law were traveling in the same load Auto, sitting in the backside. The Tribunal considering the above facts, ordered pay and recovery. In the present case, the appellant proved that seating capacity of the load Auto is only one, i.e., for driver. The 2nd respondent permitted the 1st respondent to travel in the offending vehicle, sitting next to him. The Tribunal on misinterpretation of the judgment of the Madurai Bench of this Court, erroneously ordered pay and recovery. The appellant-Insurance Company is not liable to pay compensation to the claim of unauthorized passenger. When the Insurance Company is not liable to pay compensation, the question of pay and recovery does not arise. In view of the settled law, the award of the Tribunal directing the appellant to pay compensation at the first instance and recover the same from the 2nd respondent, owner of the load Auto, alone is set aside and the appellant is not liable to pay any compensation to the 1st respondent.



15. In the result, this Civil Miscellaneous Appeal is allowed. The appellant-Insurance Company is permitted to withdraw the amount, lying in the deposit to the credit of M.C.O.P. No.121 of 2016, if any already deposited by them. It is made clear that if the 1st respondent has already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Erode District,
Bhavani.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.16340

+1cc to Mr.S.Vadivel, Advocate, S.R.No.16565

C.M.A.No.4511 of 2019
and

CMP.No.25498 of 2019

AD(CO)
CB(28/10/2021)