IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

C.M.A.NO.2277 OF 2014
AND
M.P.NO.1 OF 2014

The Divisional Office,
National Insurance Co. Ltd.,
No.62A, Nehru Street,
Pondicherry. ... Appellant/2nd Respondent

..Vs..

1.Prakash .. 1st Respondent/Petitioner

2.Suresh ... 2nd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned I Additional District Judge, (MACT), Tindivanam in M.C.O.P.No.36 of 2009 dated 07.01.2013.

For Appellant : Mr.D.Bhaskaran

J U D G M E N T

Challenging the award passed by the learned I Additional District Judge, (MACT), Tindivanam in M.C.O.P.No.36 of 2009 dated 07.01.2013, the appellant/Insurance Company has preferred the present appeal.

2.Heard Mr.D.Bhaskaran, learned counsel appearing on behalf of the Insurance Company. Though notice was ordered to the respondent/claimant, the same was unserved. With the consent of the learned counsel for the appellant, the matter has been taken today through Video Conferencing.

3.The brief facts of the case is as follows:-

a)On 15.05.2006 at about 7.00 p.m. at Mugaiyour Village at ECR, when the claimant was travelling in a Mini Load carrier bearing registration No.TN-32-T-0637, the driver applied sudden brake to avoid dashing on the bullock cart, due to which, the vehicle capsized. In the said accident, the claimant sustained grievous injuries and was admitted in the Government Hospital, Pondicherry. Hence, the injured claimant has filed a claim petition claiming a sum of Rs.3 lakhs before the Tribunal.

b)Before the Tribunal P.W.1 to P.W3 were examined as witnesses and Ex.P1 to P5 were marked on the side of the claimant whereas RW1 and RW2 were examined and Ex.R1 and R2 were marked on the side of the respondent Insurance Company. The Tribunal, after considering both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle and awarded a sum of Rs.12,750/- to be paid by the Insurance Company/appellant herein and further, the second respondent herein is directed to pay a sum of Rs.2,250/- as compensation.

4.According to the appellant, the instant appeal was challenged on the ground of liability. The respondent/claimant has claimed a compensation of Rs.3 lakhs as against the appellant/Insurance Company.

5.The offending vehicle involved in the accident is a Mini Load Carrier. The appellant/Insurance Company has raised in the defense statement that the allegations raised by the claimant in the claim petition are all false and they deny them in toto. There is no specific denial with regard to the fact that seating capacity is zero in the goods vehicle. Also that, the policy only covers the driver of the vehicle and except the driver of the vehicle, no other can claim compensation against the appellant/Insurance company.

6.The learned counsel for the appellant/Insurance Company submitted that there is no seating capacity in the said vehicle. He would submit that Ex.R2/Insurance Policy clearly mentioned that seating capacity is zero and premium covers only for the driver of the vehicle. Therefore, the finding of the Tribunal is unsustainable. On consideration of the written statement filed by the appellant/Insurance Company in M.C.O.P. No.36 of 2009, wherein there is no specific denial of seating capacity and therefore the Tribunal has not discussed the said aspect while passing the award and came to the conclusion that the Insurance Company is liable to pay the compensation amount to the claimant/respondent. But however, on considering the said fact and also that notice was not served on the respondent/claimant as on date, this Court is of the view that the issues raised in the appeal has not been raised in the written statement specifically in regard to seating capacity zero and hence the same cannot be considered now. Furthermore, in respect of the quantum of award after this distant point of time, this Court does not want to go into merits of this case as the grounds raised in the appeal has not been raised in the written statement before the Tribunal and notice was unserved on the respondent/claimant and therefore, warrants no interference with the award passed by the Tribunal in MCOP.No.36 of 2009. Consequently, the appeal is liable to be dismissed.

7.Accordingly, the Civil Miscellaneous Appeal is dismissed. The Insurance Company is directed to deposit the balance of the compensation amount along with proportionate interest to the credit of M.C.O.P.No.36 of 2009, I Additional District Court, Tindivanam, within a period of six weeks from the date of receipt of a copy of this order. The claimant/respondent is permitted to withdraw the said compensation amount on filing appropriate petition before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Deputy Registrar(L.A)

//True Copy//

Sub Assistant Registrar

DP

To

1. The I Additional District Court,
   (The Motor Accident Claims Tribunal)
   Tindivanam.

2. The Record Keeper,
   V.R.Section,
   High Court, Madras.

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and
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NRL(CO)
CS/17/11/2021