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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.07.2021	Delivered on: 23.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2941 of 2014
and
M.P.No.1 of 2014

The Branch Manager,
M/s. National Insurance Company Limited,
Mettur Main Road,
Bhavani.

.. Appellant/3rd Respondent

Vs.

1.Rajkumar Sahani @ Rajkumar

...1st Respondent/Petitioner/Claimant

2.K.N.Sampathkumar

3.K.R.Nallaswami

.. Respondents 2 & 3/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.03.2013 made in M.C.O.P.No.61 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai, Erode District.

For Appellant : Mr.J.Chandran

For R1 : Mr.N.Manoharan

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

This Civil Miscellaneous Appeal has been filed to set aside the award dated 30.03.2013 made in M.C.O.P.No.61 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai, Erode District.

2.The appellant is the 3rd respondent in M.C.O.P.No.61 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub



Court, Perundurai, Erode District. The 1st respondent filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.07.2011.

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3. According to 1st respondent, on 05.07.2011 at about 11.45 A.M., while he was traveling as Loadman in the Eicher Van bearing Registration No.TN 43 A 8884 from Thulukkappalayam to Poyankadu of Congrassampudur on the Perundurai - Thuduppathi Main Road, near Government High School, Thuduppathi, the 2nd respondent-driver of the van drove the same in a rash and negligent manner at a high speed without observing the traffic rules, lost his control over the van and dashed against the Electric Post, which was situated opposite to the School and caused the accident. In the accident, the 1st respondent was thrown away and sustained multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to KMCH Hospital, Perundurai, where he has taken treatment as inpatient for more than 15 days. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him against the respondents 2, 3 and appellant-Insurance Company, being the driver, owner and insurer of the Eicher Van respectively.

4. The respondents 2 & 3, being the driver and owner of the Eicher Van remained exparte before the Tribunal.

5. The appellant-Insurance Company, being the insurer of the Eicher Van filed counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent and also the nature of injuries and disability suffered by him. At the time of accident, the 1st respondent was working as Loadman and he has right to file the claim petition only before the Labour Court under W.C.Act and he cannot file claim petition before the Motor Accident Claims Tribunal. As per policy conditions, RC and Motor Vehicles Act, only 3 persons should travel in the cabin of the Eicher Van. But, at the time of accident, 4 persons were travelled in the cabin in violation of policy condition, RC and as per Rule 21(10) of CMV Rules and r/w Section 177 of Motor Vehicles Act. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, alleged injuries, period of treatment taken and the medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.Krishnaswamy was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. The appellant-Insurance Company



examined 3 witnesses as R.W.1 to R.W.3 and two documents were marked as Exs.R1 & R2.

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 Eicher Van belonging to 3rd respondent and directed the respondents 2, 3 and appellant to jointly or severally pay a sum of Rs.4,67,000/- as compensation to the 1st respondent.

8.To set aside the said award dated 30.03.2013 made in M.C.O.P.No.61 of 2012, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal ought to have held that the accident has occurred solely due to the negligent act of the 1st respondent and reduced the compensation. The 3rd respondent is the complainant in the F.I.R. and the 2nd respondent-driver of the van has paid fine and the Tribunal ought to have held that 2nd respondent has violated the provision of law, rules, regulations, Registration Certificate, Permit and Insurance Policy by carrying passengers in the goods vehicle. The Tribunal ought to have exonerated the appellant-Insurance Company from its liability by considering the evidence of R.W.1, RTO Assistant and R.W.2, Sub Inspector (Special), Perundurai Police Station, who deposed that at the time of accident, 3 persons along with driver were traveled in the Eicher Van in violation of R.C. and also against the Insurance Policy where only 3 persons can travel in the cabin. The Tribunal ought not to have awarded compensation for 1st respondent as he was not in the course of employment at the time of accident and he was having the only duty to feed the poultry in the poultry farm. As per Ex.P1/F.I.R. and Ex.P6/charge sheet, four persons were traveling in the cabin of the van and the Tribunal ought not to have awarded compensation to the 1st respondent. The compensation awarded by the Tribunal at Rs.4,67,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

12.It is the case of the 1st respondent in the claim petition that the accident has occurred only due to the negligence on the part of the driver of the Eicher Van belonging



to 3rd respondent and in the accident, the 1st respondent sustained injuries all over the body. To prove the said contention, the 1st respondent examined himself as P.W.1 and filed Ex.P1/F.I.R., which was registered against the 2nd respondent-driver of the van. Further, R.W.2/Special Sub Inspector of Police, Perundurai Police Station has also deposed that the accident has occurred only due to the negligence on the part of the driver of the Eicher Van belonging to 3rd respondent. From the award passed by the Tribunal, it is seen that a Criminal Case was registered against the 2nd respondent before the Civil Court, Perundurai in S.T.C.No.3133 of 2011 and the 2nd respondent has accepted his guilt and paid fine. On the other hand, it is the case of the appellant that the accident has occurred only due to the negligence on the part of the 1st respondent and there is no negligence on the part of the driver of the Eicher Van belonging to 3rd respondent. To prove the negligence on the part of the 1st respondent, the appellant has not examined the driver of the van. Further, the appellant has neither filed any objection to the F.I.R., which was registered against the driver of the van nor filed any complaint against the 1st respondent. Further, the driver of the Eicher Van has accepted his guilt and also paid fine. This shows that there is no negligence on the part of the 1st respondent. As per Ex.P1/F.I.R., the accident has occurred only due to the negligence on the part of the driver of the Eicher Van and there is no negligence on the part of the 1st respondent and R.W.2 also deposed to that effect. Hence, there is no reason to interfere with the award passed by the Tribunal with regard to negligence.

13.Further, with regard to liability, the learned counsel appearing for the appellant contended that at the time of accident 4 persons traveled in the cabin of the van including the driver and hence, for the breach of policy conditions, the appellant is not liable to pay any compensation to the 1st respondent. The learned counsel further contended that the 1st respondent was working in the poultry farm to feed the poultry and he was not employed in the vehicle at the time of accident and therefore, the appellant is not liable to pay any compensation to him. To prove the said contention, the appellant examined one C.Devaraj, Assistant from Ooty RTO as R.W.1. R.W.1 has deposed that as per Ex.R1/copy of Registration Certificate of the Eicher Van, only 3 persons can travel in the said van. The appellant also examined one C.Mani, Special Sub Inspector of Police, Perundurai as R.W.2. R.W.2 in his chief examination has deposed that he came to know that accident has occurred only due to rash and negligent driving by the driver of the Eicher Van and at the time of accident, 4 persons traveled in the cabin of the van. R.W.2 in his cross examination has deposed that the accident has occurred only due to the negligence on the part of the driver of the Eicher Van and a case has been registered



against him before the Civil Court, Perundurai in S.T.C.No.3133/2011 and the driver of the Eicher Van has accepted his guilt and paid the fine. R.W.1 and R.W.2 are not the eyewitnesses to the accident. P.W.1 in his cross examination has deposed that 4 persons traveled in the cabin of the van and two persons alighted on the way and thereafter, he along with the driver had traveled in the van and at that time only the accident has occurred. He also deposed that there was no other loadman except driver in the van. To disprove the evidence of P.W.1 that at the time of accident he along with the driver had traveled in the van, the appellant-Insurance Company has neither examined any eyewitness nor examined the driver of the van, who is the best witness to depose about the accident.

14.The further contention of the appellant that the Tribunal ought not to have awarded compensation to the 1st respondent who was not under the course of employment at the time of accident is concerned, the 1st respondent in the claim petition has stated that he was working as Loading and Unloading Labour in the Poultry Farm under the 3rd respondent. There is no contra evidence to disprove the evidence of 1st respondent that he is working under 3rd respondent. When it is proved that the 1st respondent is working under 3rd respondent, he cannot be considered as unauthorized passenger. Further, the Tribunal has observed that the respondents 2, 3 and the appellant-Insurance Company have not proved that the other persons who traveled in the Eicher Van have also filed any claim petition claiming compensation. The learned counsel appearing for the appellant further contended that the 1st respondent can claim compensation only under Workmen Compensation Act is concerned, it is for the 1st respondent to choose to file claim petition either under Workmen Compensation Act or under Motor Vehicles Act. It is not the case of the appellant that the 1st respondent has claimed compensation under Workmen Compensation Act also.

15.As far as quantum of compensation is concerned, in the accident the 1st respondent has sustained multiple grievous injuries all over the body. To prove the same, he examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent suffered 60% disability and issued Ex.P12/disability certificate to that effect. He also deposed that the left hand below elbow of the 1st respondent was amputated. The Tribunal considering the nature of injuries, disability, amputation of left hand below elbow and the nature of work done by him, adopted multiplier method and awarded a sum of Rs.3,45,600/- as compensation for loss of earning capacity and the same is not excessive. The Tribunal considering the nature of injuries and period of treatment taken by the 1st respondent, has awarded a sum of Rs.4,67,000/- as compensation to the 1st respondent which is just and reasonable



and hence, the same is hereby confirmed.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,67,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The respondents 2, 3 and the appellant-Insurance Company are jointly or severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.61 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai, Erode District. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Deputy Registrar (CLAA)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai,
Erode District.

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

+1cc to Mr. J. Chandran, Advocate, S.R.No.35278

+1cc to Mr. N. Manokaran, Advocate, S.R.No.35232

C.M.A.No.2941 of 2014

RGN(CO)
CB(16/11/2021)