BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 09.12.2020
Delivered on : 06.01.2021
CORAM:
THE HONOURABLE **MR.JUSTICE G.ILANGOVAN**
C.M.A.(MD)No.1430 of 2010

National Insurance Co. Ltd.
Through its Branch Manager,
Tenkasi Road,
Rajapalayam. ... Appellant / 3rd Respondent/Claimant

Vs.

1. Muthukumar
2. Shanmugavel Murugan
3. Rajasekar Textiles
554/15, Rajapalayam Road,
Chithirappatti, Virudhunagar.

... Respondents / Second Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 14.07.2008 passed in M.C.O.P.No.57 of 2005 on the file of the Subordinate Judge/ MACT, Kovilpatti.

For Appellant : Mrs.P.Malini
For R1 : Mr.S.Pon Senthilkumaran
For R3 : Mr.P.Aathimoola Pandian
R2 : Dismissed vide Court order dated 29.11.2017

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 14.07.2008 passed in M.C.O.P.No.57 of 2005 on the file of the Subordinate Judge/ MACT, Kovilpatti.

2. The case of the claimant is that the claimant was working as Cleaner in a Lorry, bearing Registration No.TN-67-Q-2772 which belongs to the second respondent and on 27.02.2005, at about 5.00 a.m., the first respondent was driving the vehicle on the Kumbakonam-Thanjavur main road, when they were nearing Vayalur main Road, the first respondent drove the vehicle in a rash and negligent manner and hit in a Tamarind tree standing on the south of the road, as a result of which, the claimant sustained injuries, he was taken to Thanjavur Medical College Hospital and thereafter to Kovilpatti private hospital. He was earning a sum of Rs.3,000/- p.m., as cleaner. Claiming compensation of Rs.5,00,000/-, he approached the Tribunal.

3. The third respondent filed the counter affidavit stating that the claimant was not working as a cleaner in the offending vehicle and the accident did not take place due to the rash and negligent driving on the part of the first respondent. In the additional counter, it was contended that the petitioner was working in Mailampatti Tasty Milk Company and not under the second respondent.

4. Before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 10 documents marked as Ex.P1 to Ex.P10. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 2 documents marked as Ex.R1 and Ex.R2.

5. At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving on the part of the first respondent and regarding the compensation it assessed the same at Rs.2,34,000/- with interest at the rate of 7.5% p.a., and costs. Challenging the award the appellant / Insurance Company is before this Court, mainly on the ground that the claimant was not working as Cleaner under the second respondent, at the time of the accident and he was an unauthorized passenger in a goods vehicle. Regarding the quantum also dispute is raised.

6. Subsequent to the occurrence, which is not denied by the appellant, the claimant was admitted in Thanjavur Medical College Hospital and an intimation was sent to the concerned police station and the police went to the Hospital and recorded the statement of the claimant, wherein, he has stated that he was working as a Cleaner for 10 days before the date of the occurrence in Tasty Tea Dairy Company situated in Maylampatti and on the date of the occurrence, after delivering the Milk pockets belong to their Company at Kumbakonam, returning to Thanjavur, at that time, the accident took place. The reading of the F.I.R. shows that the claimant was working in a Tasty Milk Company as a Cleaner. So, the genuineness of this information need not be doubted on the simple reason that no occasion arose for him to make such a false statement, with regard to his work. The main contention on the part of the appellant that on the date of the accident he was not working as a Cleaner under the second respondent, who is the owner of the vehicle. It is admitted fact that it is a goods carriage vehicle which can be hired by any one for carriage of goods. Ex.R2 is the Insurance policy issued by the appellant / Insurance Company, to the second respondent, wherein, we find that it is a package policy and no condition has been imposed to the effect that policy will not cover when it is used for hiring. Only under the four categories, such as organised Racing, Pace Making, Reliability Trails, and Speed Testing, insurance company is not liable. Premium was also paid for owner cum driver under the personal accident coverage, 8 employees as per Workmen Compensation Act and one Non Fare Paying

Passenger. So, it is seen that it is the package policy and the employees of the second respondent were also covered. Now, the question is whether the claimant can be construed as the employee of the second respondent at the time of the accident.

7. As I mentioned earlier even though the vehicle belongs to the second respondent it would have been hired by the Tasty Milk Company, under which the claimant was working as a Cleaner. Because the goods belongs to that Company and that goods were delivered in Kumbakonam and the lorry was returning back to Thanjavur. So, these sequence of events and facts clearly show that the second respondent vehicle was hired by the Tasty Milk Company for delivering Milk packets. So, the only probability is that the claimant was travelling in the vehicle only as a Cleaner along with the goods of the Company under which he was working. Even if we consider that he is not a Cleaner under the second respondent, he can be considered to be a Non Fare Paying Passenger and the same is also covered under the Insurance Policy, since he travelled in the vehicle in connection with the travel.

8. The appellant / Insurance Company would rely upon the judgment of this Court reported in ***[Bharathi AXA General Insurance Co. Ltd., Vs. Aandi and others] (2018 (2) TN MAC 731 (DB))*** for the purpose of arguments that in a goods vehicle, gratuitous passenger cannot be permitted to travel and even if he travelled in that vehicle it amounts to statutory violation and policy violation, so, Insurance Company cannot be fastened with any liability and also another judgment reported in ***[Gunasekaran Vs. Suseela and another] (2020 (2)TN MAC 261)***, wherein, a similar situation arose as to whether the person travelled in the vehicle was a Cleaner or a gratuitous passenger, in that case, it was held that in the absence of any evidence on the part of the employer and in the absence of any documentary evidence, the same cannot be taken into account. The Tribunal found that there is no necessity for appointing a permanent Cleaner and it can be done at any time on daily basis also and on the relevant date, he would have travelled in the vehicle as a Cleaner. As I mentioned earlier he can be treated as Non Fare Paying Passenger, who travelled in connection with the operator of the vehicle.

9. Regarding the quantum, the Tribunal taking into account, the monthly salary of the petitioner as Rs.3,000/- and half of the amount was deducted towards his personal expenses and Rs.1,500/- was taken as a loss of income, again, Rs.500/- was deducted and Rs.1000/- was taken as loss of income, by adopting multiplier method it arrived Rs.2,04,000/- towards loss of income. The adoption of multiplier method in the facts and circumstances of the case appears to be not proper. For the purpose of proving the disability, the claimant examined as P.W,.2, the Doctor, who assessed the claimant would say that his left femur bone malunited

and the hip region there was restriction with pain 20 degree flexion, the left thigh muscles capacity is reduced and assessed disability at 18%. Ex.P9 is the disability certificate. Since there was a fracture on the left femur bone, restriction on the left hip region, weakness on the left thigh, the assessment made by him at 18% can be taken as correct. But, as I mentioned earlier the adoption of the multiplier method is not proper, since there was no functional disability, due to the injuries. The claimant is entitled only for percentage basis compensation for 18%.

10. Considering the age and nature of the injury Rs.2,000/- per percentage will be proper. So, the claimant is entitled for Rs.36,000/- (Rs.2,000/- x 18 = Rs.36,000/-) for the disability and conventional amount fixed by the Tribunal can be sustained. The loss of income during the treatment period was taken as Rs.10,000/-, for Transportation Rs.2,000/- Extra nourishment Rs.3,000/-, Medical expenses marked as Ex.P8, Rs.15,000/- was ordered. So, in the facts and circumstances of the case, those compensation can be confirmed. The total compensation is reduced to Rs.66,000/- with interest at the rate of 7.5% p.a, and costs.

11. Finally this Civil Miscellaneous Appeal is partly allowed. Total compensation is reduced to Rs.66,000/-. The appellant / Insurance Company is directed to deposit the entire amount with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of realization within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the first respondent / claimant is permitted to withdraw the entire amount with interest and costs, immediately, after filing proper petition before the Tribunal.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

1.The Subordinate Judge/
Motor Accident Claims Tribunal,
Kovilpatti.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.C.KASIRAJAN, Advocate (SR-516[F] dated 07/01/2021)

+1 CC to M/s.P.MALINI, Advocate (SR-187[F] dated 06/01/2021)

order made in
C.M.A.(MD)No.1430 of 2010

06.01.2021

KMV (CO)
NR (08/02/2021) 5P : 6C