BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.701 of 2011
and
M.P.(MD)No.1 of 2011

The Divisional Manager,
Iffco Tokyo General Insurance
Company Ltd.,
195, T.V.Swamy Road,
R.S.Puram, Coimbatore. .. Appellant/Respondent-2

vs.

1.Arun .. Respondent/Petitioner

2.M.Mahendran .. Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the fair and decreetal order, dated 04.01.2011 made in MCOP No.1094 of 2007 on the file of Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.

For Appellant :Mr.S.Srinivasa Raghavan
For R1 :Mr.S.Siva Thilakar
For R2 : Mr.M.Jegadeespandian

J U D G M E N T

This appeal is directed against the award of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai passed in M.C.O.P.No.1094/2007, dated 04.01.2011.

2. This is a case of injury. The claimant would state that on 17.07.2006 at about 1.45 hours, he was travelling in an auto bearing registration No.TN-59-J-6504 and it was driven by its driver in a rash and negligent manner and suddenly it was capsized. In the accident, he sustained multiple injury and hence, he is entitled to compensation of Rs.2,00,000/-.

3. In the counter, the appellant has categorically stated that the offending vehicle is a goods carrier and as per the policy condition, no person is authorized to travel as a passenger except the owner of goods and their authorised representative. Since the claimant was travelling as a gratuitous or unauthorized passenger,

the insurance company is not liable to pay compensation.

4. Before the Tribunal, the parties adduced oral and documentary evidence. upon consideration of the evidence, the Tribunal assessed compensation at Rs.58,215/- and directed the appellant-insurance company to pay the amount and thereafter, recover the same from the owner of the vehicle. Challenging the said finding, the appellant has filed the present appeal.

5. Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant would submit that the Tribunal has erred in fastening the liability on the insurance company. According to the learned counsel for the appellant since the vehicle is admittedly a goods carrier and the injured claimant has not proved that he was travelling as a salesman or employee of the owner of the vehicle, the insurance company cannot be made liable to pay compensation.

6. Per contra, the learned counsel appearing for the first respondent/claimant would argue that the Tribunal has awarded only Rs.58,250/- and there is no illegality in the finding of the Tribunal and prayed for dismissal of the appeal.

7. In the matter on hand, the claimant has approached the Tribunal contending that he is a salesman in the Mineral Water Company. It is not in dispute that the offending vehicle is a goods carrier. The claimant has not let in evidence to show that he is the owner of the goods or an authorised representative of the owner of the goods. In the counter, the Insurance Company has specifically stated that the injured claimant is a gratuitous passenger and hence, no liability can be fixed on the Insurance company. The Tribunal having found that there is a violation of policy condition directed the Insurance Company to pay and recover from the owner of the vehicle.

8. It is well settled that the persons travelling in a goods vehicle as gratuitous passengers or his legal heirs are not entitled to claim compensation from the Insurance Company. The Division Bench of this Court in ***Bharati AXA General Insurance Co., Ltd., rep. by its Manager vs. Aandi and 2 others*** reported in ***2018(2) TN MAC 731 (DB)*** set aside the order of the Tribunal directing the Insurance Company to pay and thereafter recover from the owner of the vehicle. Hence, I am of the opinion that the appellant Insurance Company is entitled to succeed in this appeal. Insofar as the quantum is concerned, the award of the Tribunal is confirmed and only with regard to liability of the Insurance Company alone is set aside. It is open to the claimant to recover the amount awarded by the Tribunal from the owner of the vehicle.

9. Accordingly, this Civil Miscellaneous Appeal is allowed.

10. If any amount is deposited by the Insurance Company before the Tribunal, the same shall be refunded to the appellant/Insurance Company, if the same is not withdrawn by the claimant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

am

To

1.The IV Additional Sub Judge,
The Motor Accidents Claims Tribunal
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 c)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-9965[F] dated 10/03/2021)

C.M.A(MD) No.701 of 2011
08.03.2021

KK(19.05.2021) 3P 5C