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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) No.463 of 2010

and

M.P (MD) No.2 of 2010

S.Murugesan

... Appellant/1st Respondent

-vs-

1.The Divisional Manager,

The New India Assurance Company Limited,

Dindigul.

... Respondent/2nd Respondent

2.Velusamy

... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1998, against the judgment and award dated 15.06.2005 passed in M.C.O.P.No.278 of 2000 on the file of the Motor Accident Claims Tribunal cum Additional District Session Judge, FTC, Dindigul.

For Appellant

:Mr.J.Anandkumar

For R1

:Mr.J.S.Murali

For R2

: No appearance

JUDGMENT

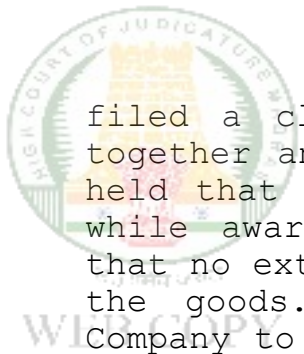
This appeal is filed by the owner of the vehicle challenging the direction issued by the Motor Accidents Claims Tribunal cum Additional District Sessions Judge, FTC, Dindigul, in M.C.O.P.No.278 of 2000, wherein the Insurance Company was directed to pay the award amount at the first instance and then to recover from the owner of the vehicle.

2.The second respondent herein Velusamy filed MCOP No.927 of 1999 claiming compensation of Rs.2 lakhs. According to him, on 25.07.1999, he travelled in a mini lorry bearing Registration No.TN60 7764 along with his goods(Mango) worth of Rs.30,000/- from Dindigul to Madurai. It is alleged that the driver of the van drove the vehicle in a rash and negligent manner and hence, he lost control of the vehicle and it capsized. In the accident, he sustained injury. Immediately, he was taken to Government Rajaji Hospital for treatment.

3.The claim petition was resisted by the Insurance company disputing the manner of accident and their liability to pay the compensation.

4.One Muthupandi, who sustained injury in the same accident,

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filed a claim petition in MCOP No.185 of 2000. Both were heard together and a common order was passed on 15.06.2005. The Tribunal held that the driver of the van was responsible for the accident, while awarding compensation to the claimants, the Tribunal found that no extra premium was paid to cover the Loadman and the owner of the goods. On that score, the Tribunal directed the Insurance Company to pay the award amount and recover the same from the owner of the vehicle.

5.Mr.J. Anandkumar, learned counsel appearing for the appellant submitted that admittedly the claimant/second respondent herein travelled in the vehicle, as the owner of the goods and hence, under Section 147 of the Motor Vehicles Act, the Insurance Company is liable to pay the compensation.

6.Per contra, Mr.J.S.Murali, learned counsel appearing for the first respondent submitted that admittedly the offending vehicle is the goods carrying commercial vehicle, but no additional premium was paid to cover the liability of the owner of the goods or the Loadman. Hence, there is no illegality in the findings of the Tribunal. It is contended that by a common order, the Tribunal held that the owner is liable to reimburse the compensation to the Insurance Company, but the award passed in MCOP No.185 of 2000 is not challenged.

7.In the matter on hand, on a perusal of the records, it is seen that the second respondent has categorically pleaded in the claim petition that he was doing business and on 25.07.1999 he travelled along with the goods in the offending vehicle and the specific stand taken by the claimant has not been disputed in the counter filed by the first respondent. So it can be safely held that the second respondent herein travelled in the vehicle at the time of accident as the owner of the goods. It is to be noted that after amendment to the Motor Accident Vehicle Act in the year 1994, a statutory liability is cast upon the Insurance Company to pay compensation to the owner of the goods or his agent, who travelled in the goods vehicle at the time of the accident, provided a policy was in force at that relevant time. In the matter on hand, the finding of the Tribunal that no extra premium was paid to cover such liability and hence, the owner is liable to pay compensation cannot be countenanced. In such view of the matter, the direction given by the Tribunal to the Insurance Company to pay the award amount and recover from the insured is liable to be set aside and accordingly set aside. In fine, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8.The appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the modified award



amount so deposited with accrued interest and costs, less the amount already withdrawn, if any, by filing a formal petition before the Tribunal.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To:

1.The Motor Accident Claims Tribunal cum
Additional District Session Judge,
FTC, Dindigul.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-5033[F] dated 15/02/2021)

C.M.A(MD) No.463 of 2010

and

M.P (MD) No.2 of 2010

12.02.2021

KK(25.05.2021) 3P 5C