



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2021

Delivered on : 17.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) No.293 of 2013

Nachimuthu

... Appellant / Claimant

Vs.

1.Selvam

2.M/s.Royal Sundaram Alliance

Insurance Company Limited

Sundaram Towers,

45 & 46 White's Road,

Chennai,

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order passed in M.C.O.P.No.416 of 2007 by the Ist Additional Subordinate Judge, Madurai, by order and decree, dated 11.06.2009.

For Appellant : Mr.Sarangan

for Mr.K.Hariharan

For R2

: Mr.S.Srinivasa Raghavan

R1

: Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.416 of 2007 by the Ist Additional Subordinate Judge, Madurai, dated 11.06.2009.

2.The appellant herein is the claimant and the respondents are the respondents in the original petition.

3.Brief substance of the petition in M.C.O.P.No.416 of 2007 is as follows:

On 12.02.2006 at about 7.00 pm., when the petitioner was travelling in a vehicle bearing Registration No.TN-59-W-5614, which belongs to the first respondent, the driver of the vehicle drove the vehicle in a rash and negligent manner and the vehicle capsized. The claimant sustained injuries and claim Rs.3,00,000/- as compensation.

4.Brief substance of the counter in M.C.O.P.No.416 of 2007 is as follows:

The first respondent vehicle was registered as a goods carrier.

<https://hcservices.ecourts.gov.in/hcservices/>



Passengers in a goods vehicle are not entitled for compensation. The claimant is not a load man. There is violation of policy conditions. The claimant has to prove his age, income and profession.

5. Three witnesses were examined and Eight documents were marked on the side of the petitioner. One witness was examined and Two documents were marked on the side of the respondents.

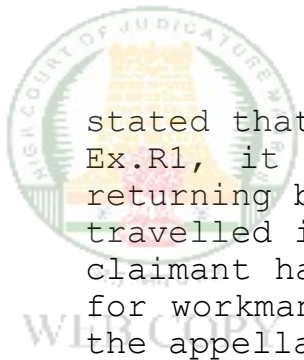
6. After hearing both sides, the Tribunal awarded a sum of Rs.50,200/- as compensation, to be paid by the owner of the vehicle. Against the order, the claimant has preferred this Civil Miscellaneous Appeal.

7. On the side of the appellant, it is stated that the Tribunal ought to have fixed the liability against the Insurance Company, instead of the first respondent. P.W1 has clearly deposed that he worked as a load man under the first respondent and the vehicle was used for carrying grocery items for an engagement function and the accident took place, while returning after unloading the goods. The disability is fixed as 40%. The claimant took treatment as inpatient for more than two months and he had undergone surgery. This facts were not taken into consideration by the Tribunal and prayed the liability to be fixed against the Insurance Company.

8. On the side of the appellant, it is stated that in Ex.P1 to P3, it is clearly mentioned that the claimant travelled only as a load men. The burden of proof is on the respondent and the respondent has to prove that the appellant is a gratuitous passenger. R.W.1 is working in the Insurance company and his evidence is untrust worthy.

9. On the side of the second respondent, it is stated that the burden is not on the Insurance Company. The claimant has to prove that he has travelled as a load man. The co-passengers were not examined, to prove that they travelled as load men. The goods carrier was used only for carrying passengers to attend a marriage engagement. The owner of the vehicle was not examined as a witness and the driver of the vehicle was also not examined as a witness. A judgment of this Court published in **2009(1)CTC-1 [Branch Manager, United India Insurance Company Limited Vs. Nagammal and others]** is cited. Another judgment of the Hon'ble Supreme Court reported in **2008-2-TNMAC-231 [United India Insurance Company Limited Vs. Suresh K.K. And others]** is also cited. The personal belonging of a person are not goods and attending a function has proved that the appellant was not a load man.

10. A Perusal of the records reveals that in the F.I.R, it was mentioned that the appellant / claimant was working as a load man in the Minidoor Auto. In the charge sheet and in the judgment, it is



stated that the appellant / claimant worked as a load man. Even in Ex.R1, it is stated that the claimant unloaded rice bags and was returning back. From Ex.P1 and R1, it is decided that the appellant travelled in the Minidoor Auto as a load man. Since the appellant / claimant has travelled as a load man and there is a policy coverage for workman, the Insurance Company is liable to pay compensation to the appellant.

11.On the side of the appellant, it is stated that the disability fixed by the Tribunal is low. The wound certificate was marked as Ex.P5. Disability Certificate was marked as Ex.P7. The Doctor was examined as P.W.3. The X-ray report was marked as Ex.P8. In the evidence of P.W.3, it is stated that there is no mal-union and the bones were correctly united. In the above circumstances, it is decided that the fixation of the disability by the Tribunal is correct. There is no serious objection regarding the fixation of award amount. The order of the Tribunal is modified that the Insurance Company is liable to pay compensation on behalf of the owner of the vehicle. With the above modification this Civil Miscellaneous Appeal is allowed.

12.The second respondent / Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire award amount, after deducting amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Ist Additional Subordinate Judge,
Madurai,

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

+1 CC to M/s.S. VIJAYASHANTHI, Advocate (SR-26615[F] dated
18/08/2021)

+1 CC to MR.S.SRINIVASA RAGHAVAN, Advocate (SR-26875[F] dated
19/08/2021)

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17.08.2021

MGJ(03.09.2021) 4P 6C