IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

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THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2233 of 2019
and
C.M.P.No.9509 of 2019

M/s.New India Assurance Company Ltd,
No:45, Moore Street, 5th floor,
Chennai - 1. ... Appellant

Vs

1.R.Kuppammal
2.K.Ganesan ... Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 09.04.2018 made in M.C.O.P.No.6432 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.R.Neethi Perumal

For Respondent - 1 : Mr.A.Ganesan

For Respondent - 2 : Notice Served- No Appearance

JUDGMENT

The Second respondent Insurance Company has filed the above Appeal, challenging the award passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.6432 of 2013 dated 09.04.2018.

2. The grievance of the Appellant/ Insurance Company is both on quantum and by reason of the Tribunal not permitting the pay and recovery to the Appellant/ Insurance Company, as there is a violation of the policy conditions.

3. The facts in brief are as follows:

On 28.06.2013 at about 12.30 hrs, the claimant was traveling as a passenger in a car bearing Registration No.TN-27-M-2828 at Periya Sevalai Road from Thiruvannai Nallur to Cuddalore along with other passengers. The driver of the said car had driven the car in such a rash and negligent manner, that he had lost control of the car, which went to the left extreme of the road and fell into a pit, as a result of which, the claimant was thrown out and sustained grievous injuries. The accident was only on account of the rash and negligent driving of the first respondent.

4. The first respondent remained *ex-parte* in the case. The Insurance Company of the first respondent's car had filed their counter denying their liability stating that there was violation of the terms of the Policy. They had contended that unless the first respondent shows that they have not violated the policy conditions, the Appellant/ Insurance Company is not liable to indemnify the first respondent.

5. The Tribunal had held that the accident had occurred only on account of the rash and negligent driving of the driver of the car. The Tribunal has awarded a total sum of Rs.3,32,139/- as compensation. The Tribunal had held that there was no dispute regarding the coverage of insurance on the date of accident. Therefore, the Appellant/ Insurance Company is liable to pay the compensation.

6. Challenging the same, the Insurance Company has filed the above Appeal.

7. Mr.R.Neethi Perumal, learned counsel appearing on behalf of the appellant would submit that the Court below had failed to appreciate that the first respondent was using his private car to ply passengers, which is a violation of the policy conditions. The car has been insured as a private vehicle. However, it was being utilized for plying passengers. The fact that the private car was used as a public taxi, is evident from the very statement made by the claimant in her claim petition, wherein she has stated that the car, in which she was traveling had other passengers, clearly indicates that they were strangers, who were travelling together in the car at the time of the accident. The owner of the offending car was served with notice and has not entered appearance before this Court. The learned counsel for the Insurance Company, therefore, sought for an order directing pay and recovery. He also questioned the quantum, but, however, could not give any legally sustainable reasons for objecting to

the Award.

8. Mr.A.Ganesan, learned counsel appearing for the claimant would submit that he has no objection, if the Court orders pay and recovery. Here again the owner of the car though served has chosen not to appear before this Court.

9. Heard the learned counsels appearing on either side and perused the materials available on record.

10. As regards the issue of quantum, the Appellant / Insurance Company has not made out any case for interfering with the award and on a mere perusal of the compensation granted in relation to the injuries sustained, it appears to be just and reasonable. As regards liability, the Tribunal has observed that it is the car driver, who was responsible for the accident. However, it is the case of the Appellant / Insurance Company that the private car has been converted into a taxi to ply passengers, which is a violation of the terms of the policy and that it is a

private car, used for ferrying public, which is evident from the claim statement and the evidence of claimant. Therefore, considering the fact that there is violation of the policy conditions, the Appellant / Insurance Company shall pay the compensation to the claimant and recover the same from the second respondent herein being owner of the car. In other respects, the Award of the Tribunal is hereby confirmed. Accordingly, the Civil Miscellaneous Appeal is allowed to the above extent. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

29.03.2022

Index : Yes/No
Speaking Order : Yes / No
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To

1. The Motor Accident Claims Tribunal,
II Additional District and Sessions Court,
Tiruvallur, Poonamallee.

2.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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