IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2683 of 2012
and
Cross.Obj.No.82 of 2021
and
M.P.No.1 of 2012

C.M.A.No.2683 of 2012:

The New India Assurance Company Limited,
New No.453, Anna Salai,
II Floor,
Teynampet,
Chennai – 18. ...Appellant/2nd Respondent

Vs.

1.Thulasi …Respondent/Petitioner
2.Neelakandan …Respondent/1st Respondent

Cross.Obj.No.82 of 2021:

Thulasi ... Cross Objector

Vs.

1.Neelakandan

2.The New India Assurance Company Limited,
New No.453, Anna Salai,
II Floor,
Teynampet,
Chennai – 600 018. … Respondents

Prayer in C.M.A.No.2683 of 2012: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated in M.C.O.P.No.79 of 2007 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chengalpet.

Prayer in Cross.Obj.No.82 of 2021: Cross Objection is filed under Order XLI Rule 22 of the Code of Civil Procedure against the Award and Decree dated in M.C.O.P.No.79 of 2007 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chengalpet.

For Appellant : Mr.M. Krishnamoorthy
in C.M.A.No.2683 of 2012

Mr.A.Babu
in Cross.Obj.No.82 of 2021

For Respondents : Mr.A.Babu for R1
in C.M.A.No.2683 of 2012

R2 – notice served – No appearance
in C.M.A.No.2683 of 2012

Mr.M. Krishnamoorthy for R2
in Cross.Obj.No.82 of 2021

COMMON JUDGMENT

The above Civil Miscellaneous Appeal and Cross Objection arise from out of the Award passed in M.C.O.P.No.79 of 2007 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chengalpet. The parties are referred to in the same rank and array as before the Tribunal.

2.The brief fact which has culminated in filing of the above proceedings are as follows:

The petitioner had filed the above claim petition seeking compensation for the injuries sustained by her in a road accident. The petitioner had stated that the accident had occurred when she was on her way to do construction works. It is her contention that on 13.10.2006, when she along with others were travelling in the 1st respondent's vehicle from her residence to Kalpakkam to attend to the building construction works for which she was employed, the driver of the vehicle had driven the same in such a rash and negligent manner and at a high speed that the vehicle had turned turtle and the petitioner and others had sustained injuries.

3.As the 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the vehicle they are liable to pay compensation for the injuries sustained by her. The 1st respondent remained *ex parte* and the 2nd respondent/Insurance Company has defended the case. The 2nd respondent/Insurance Company would submit that they are not liable to compensate the petitioner inasmuch as the petitioner was not travelling in the said vehicle. It was also denied that the petitioner had suffered grievous injuries on account of the accident. The income and the occupation of the petitioner was also questioned.

4.The Tribunal on considering the evidence on record came to the conclusion that on account of the rash and negligent driving of the driver of the 1st respondent's vehicle, the accident has occurred. The contentions raised by the 2nd respondent/Insurance Company during the arguments that the 1st respondent had violated the policy conditions by allowing 21 persons travelled in a goods vehicle and therefore, the 2nd respondent is not liable to compensate the 1st respondent, was rejected on the ground that as per Ex.R.1 – Insurance Policy, the owner-cum-driver and 3 employees were covered under the Policy. The Tribunal took the view that there was a compulsory coverage for the owner-cum-driver and 3 employees and at the time of accident, 10 persons were travelling. The petitioner was a third party and following the Judgments in **National Insurance Company Limited, Kovilpatti v. G.Arumugam and another** reported in **2010 (2) TNMAC 362**, directed the 2nd respondent Insurance Company to pay compensation and recover the same from the 2nd respondent. As regards the quantum of compensation, a sum of Rs.2,31,000/- was awarded. Challenging the Award of compensation to the petitioner, the Insurance Company is before this Court. Challenging the low amount of compensation granted, the 2nd respondent Insurance Company has filed the above Cross Objection.

5.Heard the learned counsels appearing on either side and perused the papers.

6.A perusal of the Claim Statement would show that the petitioner Thulasi was shown to be a construction worker and against the Column No.5 - Name of the Employer, she has not filled it up with any name. That apart, RW1 had admitted to the fact that 21 persons were travelling in the vehicle when it had capsized. The vehicle in question is a goods vehicle and not a passenger vehicle. The petitioner's counsel would argue that since the policy covered the owner -cum- driver and 3 employees, the petitioner could be treated as one of the employees falling within the terms of the policy. He had also pointed out the reasonings given by the Tribunal by awarding compensation on the ground that this petitioner should be treated as an employee. The admitted fact is that the vehicle in question is a goods vehicle. Another admitted fact is that 21 persons have been travelled at the same time in the said vehicle. Although they are coolie workers going to the construction site there is no evidence to show that the 1st respondent is engaged in doing the construction works. Even assuming that he is doing the same business the fact that in the goods vehicle 21 passengers travelled is a clear violation of the policy conditions. Therefore, the Tribunal has clearly erred in directing the Insurance Company to pay compensation and recover the same from the 1st respondent. Section 149(2)(c) of the Motor Vehicles Act clearly provides that the policy would not cover to the passengers of the goods vehicle.

7.In these circumstances, this Civil Miscellaneous Appeal is allowed. The appellant/Insurance Company is exonerated from making payments to the petitioner and the same shall be claimed from the 1st respondent/owner of the vehicle. The appellant/Insurance Company is permitted to withdraw all the amounts deposited by them to the credit of the Original Petition. The Cross Objection filed by the claimant is dismissed.

8.Mr.Neelakandan, the owner of the vehicle, is directed to deposit the entire amount with proportionate accrued interest and costs, to the credit of M.C.O.P.No.79 of 2007 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chengalpet, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpet.

P.T. ASHA, J,

mps

C.M.A.No.2683 of 2012
and
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