IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2825 of 2013

Azhagiri .. Petitioner / Appellant

-Vs.-

1. Kesavan

2.The Manager
ICICI Lombard General Insurance Co. Ltd.,
140, Chottabai Centre, II & III Floor
Nungambakkam High Road
Chennai. .. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside and to enhance the award dated 22.03.2013 made in M.A.C.T.O.P.No.403/2009 on the file of Motor Accident Claims Tribunal, District Judge, Tiruvannamalai (Principal Subordinate Judge's Court, Tiruvannamalai).

For Appellant	...	Mr.F.Terry Chellaraja
For Respondents	...	Ms.R.Sreevidhya for R2
		R1 - Served (No Appearance)

JUDGMENT

The petitioner before the Motor Accident Claims Tribunal (Principal Subordinate Court), Thiruvannamalai in M.C.O.P.No.403 of 2009 is the appellant before this Court questioning the exoneration of the second respondent-Insurance Company from compensating the claimant.

2. The facts in brief necessary for disposing of this appeal, are herein below narrated:

The petitioner had filed the claim petition seeking compensation of a sum of Rs.5,00,000/- for the injuries sustained by him in a road accident on 16.02.2009. It is his case that on the said date, he had on the instructions of the first respondent proceeded from Chengam to Pennadam. For this purpose, he had traveled as a cleaner in the lorry belonging to the first respondent, bearing Registration No.TN 23 AE 2632 and insured with the second respondent-Insurance Company. The driver of the lorry was driving the same in a rash and negligent manner, as a result of which, the vehicle dashed against the lorry proceeding in front of the vehicle. By reason of the impact, the petitioner had sustained injuries. He would submit that he was working as a cleaner under the first respondent and earning a monthly income of Rs.6,000/-.

3. The first respondent remained *ex-parte* and the second respondent-Insurance Company had filed a counter *inter-alia* contending that there was no negligence on the part of the driver of the 1st respondent's lorry, as it was the lorry which was proceeding in front which had suddenly applied its brake as a result of which, the accident had taken place. The Insurance Company had also put the petitioner to proof that he had traveled as a cleaner in the lorry and that no insurance premium has been paid by the first respondent for the cleaner. Therefore, they are not entitled to compensate the petitioner.

4. The Tribunal below on perusing the evidence held that the negligence was solely on account of the driver of the first respondent's lorry and proceeded to award a sum of Rs.1,85,350/- as compensation. However, the Insurance Company was exonerated on the ground that no additional

premium had been paid for the cleaner to compensate him. Challenging the same, the petitioner is before this Court.

5. Mr.F.Terry Chellaraja, learned counsel appearing for the appellant would submit that the policy in question was a comprehensive policy and terms thereof had covered the driver as well as the employee. He would submit that even in the Ex.P1-F.I.R, the petitioner has been named only as a cleaner and the Insurance Company has not let in any evidence to rebut the said claim.

6. Per contra, Ms.R.Sreevidhya, learned counsel appearing for the second respondent-Insurance Company would submit that the petitioner was not an employee of the first respondent and that apart, it was only the driver, who had an automatic cover and in order to ensure the coverage of the cleaner, additional premium had to be paid which in the instant case has not been passed.

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

8. A perusal of Ex.R1=P4-Policy would indicate that the cleaner, who is an employee of the first respondent is also covered. The Limits of liability and the exclusion clause indicated in the Policy would read as follows:-

> *"Use only for carriage of goods within the meaning of the Motor Vehicles Act. The policy does not cover (1) use for organized racing pace making, reliability trials or speed testing (2) use whilst drawing a trailer accept the towing (other than for reward) of any one disabled mechanically propelled vehicle (3) use for carrying passengers in the vehicle **except employees (other than the driver) not exceeding the number permitted in the registration document** and coming under the purview of Workmen's Compensation Act, 1923"*

9. Therefore, a reading of the above exclusion would clearly show that an employee in addition to the driver has been covered. The vehicle in

question is a lorry and the Registration Certificate-Ex.P2 would show the seating capacity in the cabin as '3". The petitioner is the cleaner and the F.I.R and the oral evidence of P.W2 would clearly show that he was employed under the first respondent. Therefore, considering the fact that the cleaner is covered by the policy, the order of the Tribunal exonerating the Insurance Company is set aside. As regards the quantum of compensation, the same appears to be fair and reasonable. Therefore, it does not call for any modification. In the result, civil miscellaneous appeal is partly allowed. The quantum of compensation awarded by the Tribunal is confirmed and the second respondent-Insurance Company is directed to pay the compensation to the petitioner. No costs.

23.11.2022

srn
To

1. The District Judge, Tiruvannamalai
(Principal Subordinate Judge's Court, Tiruvannamalai).

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

P.T.ASHA, J.,

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