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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1183 of 2018

Tata AIG General Insurance Company Ltd.,
No.403-L, Pandian Road, 2nd Floor, Samson Towers,
Chennai - 600 008.

...Appellant / 2nd Respondent

vs.

1.Y. Elson Babu @ Elson

...1st Respondent / Petitioner

2.A.Deepa

...2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 13.01.2018 made in MCOP No.157 of 2015 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Tiruttani.

For Appellant : Mr.K.Vinod

For Respondents: Mr.K.Varadha Kamaraj

JUDGMENT

The 2nd respondent / Insurance Company in MCOP No.157 of 2015 on the file of the Sub Court / Motor Accident Claims Tribunal, Tiruttani, is the appellant herein. MCOP No.157 of 2015 had been filed by the 1st respondent herein / Y.Elson Babu @ Elson, seeking compensation for the injuries suffered when he was travelling in a Tata Ace vehicle bearing Regn.No.TN-20-CE-2821 on 15.04.2015 in his capacity as a cleaner in the said vehicle.

2.A better appreciation of the facts reveal that on 15.04.2015 at around 8.00 a.m, when the aforementioned Tata Ace vehicle belonging to the 2nd respondent herein / A.Deepa was going towards Vellore from Ambur in the National Highway Road, at Agaramcheri in Pallikonda, the driver of the vehicle had apparently driven it in a rash and negligent manner and the



injured who was travelling in the van had fallen down on the road and sustained multiple and grievous injuries. It was claimed that these injuries were suffered only owing to the rash manner in which the vehicle was driven.

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3.The nature of the injuries suffered were as follows:

1.Left humares fracture.

2.Left hand neck of humares fracture.

3.Left both bone fracture.

4.Heard injuries, facial injuries.

5.Left hand skin total loss and cruch injuries and multiple injuries all over the body.

4.Seeking compensation for the injuries suffered, MCOP No.157 of 2015 had been filed.

5.A counter had been filed on behalf of the present appellant, wherein they stated that the driver of the vehicle was not holding any badge giving right to drive the said goods vehicle. He had only a license to drive a light motor vehicle. It was also very specifically stated as follows in paragraph 7 of the counter,

"7.It is submitted that in the petition the injured was shown as cleaner cum loading man of the 1st respondent vehicle and employed with 1st respondent, but the petitioner has not produced any evidence and there is no proof for the same."

6.MCOP No.157 of 2015 came up for consideration before the Sub Court Tiruttani / Motor Accident Claims Tribunal and an award was passed on 13.12.2017, wherein, the Tribunal had granted a total compensation of Rs.16,54,752/- together with future interest at 7.5% from the date of filing of the petition till the date of realization.

7.This grant of compensation is assailed by the learned counsel for the appellant / insurance company who quite apart from urging that there was no lawful driving licence for the driver, which fact was also found established by the Tribunal, raised the issue that the injured, had not let in any evidence to establish that he was a cleaner and therefore was travelling in the Tata Ace vehicle in his capacity as cleaner. It was pointed out that the vehicle had been taken for hire to transport gift articles, which had been received at the time of wedding of the daughter of one Gunasekaran and in the vehicle, there were about five other passengers, who were all family members of Gunasekaran.

8.It had been pointed out that therefore the presence of the injured, in his capacity as cleaner has not been established and therefore, in this appeal it is urged that the entire



compensation which had been granted should be interfered with by this Court and no liability can be fastened on the appellant herein to honour the award granted. To put it in simple terms, it had been claimed that the claimant before the Tribunal was an unauthorized passenger, a gratuitous passenger who had no authority to travel in the vehicle and that he was not a third party who had suffered injuries or was authorized to travel in the vehicle.

9.A perusal of the records reveal that on behalf of the claimant, the claimant alone had let in evidence and during the course of evidence he had marked Ex.P1 a copy of the FIR and Exs.P2 and P3 copies of the discharge summary. Ex.P4, the medical bills and Ex.P5, the disability certificate. To establish that the driver of the vehicle did not have a valid licence to drive the said vehicle, the appellant herein had examined RW-1 from the Road Transport Office and also had examined RW-2 their own official.

10.Be that as it may, the crucial aspect which is raised in this appeal is the liability of the insurance company / appellant to pay any compensation on the ground that the injured was not authorized to travel in the said vehicle. If he was authorized to travel in the said vehicle, then the burden was on the injured to prove that he was travelling in some capacity, atleast as a cleaner of the vehicle. It is pointed out that the actual driver of the vehicle was one Prasanth, but at the time of accident another individual one Elango was driving the vehicle.

11.All these points urged surround the status of the injured to travel in the van. There is no evidence at all on that aspect.

12.On the basis of the records available, the appeal can be straight away allowed and the claim petition preferred by the injured can be rejected.

13.But let me grant one opportunity to the claimant to establish that he was working as a cleaner. This does not imply that the claimant is given an opportunity to adduce evidence to fill in gaps but rather to conform to the Claim Petition already filed. Any evidence let in should be admissible and should be tested during the course of cross-examination. I would therefore remand the appeal to record further evidence on this aspect.

14.The Tribunal on receipt of records should take care to ensure that this opportunity is not misused by the claimant to adduce any fresh evidence which had not been pleaded at all.



Evidence on all aspects can be recorded again, including more particularly, whether the injured was travelling as a cleaner.

15. Therefore, evidence on that particular aspect relating to whether the injured was a cleaner or not, can be produced and such evidence should not only be admissible but should also be proved in manner known to law and more importantly, the Tribunal should examine it with magnifying glasses to ensure that truthful evidence alone is adduced. Any evidence produced should be subjected to cross-examination and tested during the course of cross-examination. Evidence on the nature of injuries, the disability suffered and the compensation to be granted may also be let in.

16. I am consciously not entering into any discussion on the quantum of compensation granted. That is an issue which can be examined after evidence is recorded on the aforementioned aspects.

17. In view of the fact that, there is no evidence to hold that the claimant is a cleaner, the compensation granted is also interfered with. The entire order is set aside and the matter is remanded back for fresh disposal in manner known to law. It is hoped that the Tribunal would conduct the trial as expeditiously as possible.

18. In the result, the award and decree dated 13.12.2017 in MCOP No.157 of 2015 is set aside and the matter is remanded back to the Motor Accident Claims Tribunal / Subordinate Court, Tiruttani, for fresh trial. The Civil Miscellaneous Appeal is allowed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

smv

To:

The Subordinate Judge,
Motor Accident Claims Tribunal
Tiruttani.



Copy to

The Section Officer,
VR Section, High Court Madras.

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(With a direction to send back the
entire records received from Motor Accident
Claims Tribunal, The Subordinate Judge, Tiruttani)

+lcc to Mr.K.Vinod, Advocate, S.R.No.24413

+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.24798

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AJS[co]
NSK/18/05/2022