



C.M.A.(MD)No.1327 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.11.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1327 of 2009

The Branch Manager,

The Oriental Insurance Co.Ltd.,

Thanjavur.

.. Appellant /2nd Respondent

Vs.

1.Desabandhu

... 1st Respondent / Petitioners

2.Latha

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 11.06.2007, made in M.C.O.P.No.168 of 2003, on the file of the Motor Accident Claims Tribunal - Principal Sub Judge, Thanjavur.

For Appellant

: Mr.C.Karthik

For Respondents

: Mr.G.Thalaimutharasu for R1

: No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 11.06.2007, made in M.C.O.P.No.168 of 2003, on the file of the Motor Accident Claims Tribunal - Principal Sub Judge, Thanjavur. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.168 of 2003, is as follows:

On 25.07.2002, when the petitioner was travelling in a Tractor bearing Registration No.TN-50-A-4820, the driver drove the tractor in a rash and negligent manner, dashed against a coconut tree. The petitioner and a cleaner-Venkatesan, who travelled in the tractor sustained injuries, at that time, an ambulance that belonged to the Athikadai Jammath came there, the petitioner and one Venkatesan were taken to Medical College Hospital, Thanjavur and were admitted as inpatient. The petitioner took treatment as inpatient for a period of one month. He underwent surgery. The Doctor advised him to undergo another surgery. The petitioner sustained disability and he could not attend to his work. The petitioner claimed a sum of Rs.6,00,000/- as compensation.



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WEB COPY 3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.168 of 2003, is as follows:

The petition is bad for non joinder of necessary parties. In column No. 23 of the claim petition, the owner of the tractor was mentioned as Mani, but, in paragraph No.15, the name of the owner was mentioned as Latha. In the F.I.R., it was stated that the petitioner was doing agricultural work, but, in paragraph No.4, it is stated the the petitioner was working as a cleaner in a lorry. No such accident has taken place on 25.07.2002. Either the petitioner or the said Vengatesan has ever travelled in the vehicle. The injuries are not admitted. The criminal case has no relevancy for the purpose of his petition. The petitioner has to prove that the driver of the first respondent was having valid driving licence at the time of accident. The particulars of age, occupation, income are all denied.

4. 2 witnesses were examined and 9 documents were marked, on the side of the claimant. 1 witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.92,920/- as compensation to be paid by the respondents 1 and 2 and the Insurance company was directed to pay the amount to the claimant and the Insurance Company was directed to recover the same from the owner of the vehicle.



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WEB COPY 5. Against the award, the second respondent / appellant has filed both the appeals on the following grounds:-

The Tribunal failed to note that the seating capacity of the Tractor is only one. The passengers are not permissible in a tractor, the insurance company cannot be held liable. The Tribunal failed to consider that the specific terms in the policy, accepting “ legal liability for paid driver/ workman No.1 to mean that the appellant accepted the liability, both for the driver and one workman”. The appellant has received the premium for only one driver alone. The Tribunal failed to consider that the Doctor, who gave the disability certificate, did not give any treatment to the injured. The Tribunal failed to consider that the appellant examined R.W.1 and proved that there was policy violations. The tractor was not used for agricultural purpose. The trailer has to be taken as a goods carriage. As per the F.I.R, the injured was sitting on the mudguard of the tractor, the tractor meant for carrying passengers. The insurance company is not liable to pay compensation for the gratuitous passengers, who travelled in a tractor. The appellant has to be exonerated of the liability. There is no possibility of an order for pay and recover.

6. On the side of the appellant, it is stated that the tractor was used for loading bricks at the time of accident. The tractor was not used for any agricultural



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purpose. The seating capacity for the tractor is only one, that is, the driver. Nobody else was permitted to sit in the trailer or on the mudguard. There is no coverage for gratuitous passenger. A judgment of this Court

(i) in C.M.A.(MD)Nos.46 and 163 of 2012 (The Manager, IFFCO TOKIA General Insurance Company Ltd., V. Sathiskumar), dated 27.09.2022 and

(ii) another judgment of this Court in CMA(MD)No.926 of 2021 (The Branch Manager, Oriental Insurance Company Ltd., V. Kaliyammal), dated 27.09.2022, are cited.

7. On the side of the first respondent-claimant, it is stated that no question was raised in the counter, regarding the violation of policy condition, only in the appeal, the appellant is claiming policy violations. The employer and employee relationship between the owner and the insured are not disputed. The claimant was not able to use his hand. Even when the tractor was not insured, the Court can order the insurance company to pay the compensation and to recover the same from the owner of the vehicle. A judgment of the Hon'ble Supreme Court in Appeal (Civil) No.2532 of 2007 (Oriental Insurance Company Ltd V. Brij Mohan and others), dated 15.05.2007 is cited.



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8. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-copy of F.I.R, the Tribunal has fixed the liability on the Tractor driver. R.W.1 has deposed that the vehicle was a tractor, nobody, except the driver was permitted to travel in the tractor. Since the claimant travelled in the tractor, the Tribunal has given a finding that there is policy violation and that the insurance company can pay the compensation and recover the same from the owner of the vehicle.

9. On the side of the appellant, it is stated that the claimant cannot travel in a tractor and hence, the Tribunal cannot fix the liability on the appellant and the vehicle is a goods carrier, supposed to be used only for agricultural purpose. But, at the time of accident, it was not used for any agricultural purpose and the claimant was not entitled to travel in the tractor. Since the tractor is a goods carrier and since there is no seating capacity for any passenger in a tractor, it is decided that the appellant is to be exonerated from liability.

10. On the side of the appellant, it is stated that regarding the profession of the claimant, three different stands were taken by the claimant. He was stated as a cleaner in the lorry, then, cleaner in the tractor another version is that he was an agriculturist. The claimant claimed a sum of Rs.3,500/- per month as salary. Discharge summary was marked as Ex.P2. Prescriptions were marked as Ex.P3.



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Wound certificate was marked as Ex.P6. X-Rays were marked as Ex.P7 and Ex.P8.

The treatment book was marked as Ex.P9. P.W.2 has deposed that the claimant sustained 34% disability. Since P.W.2-Doctor, was not the Doctor, who gave treatment to the claimant, the Tribunal fixed the disability at 17%. The Tribunal fixed the income as Rs.2,000/- per month. Considering the age of the claimant, the Tribunal applied multiplier '17'. For 17% disability, the Tribunal awarded Rs. 73,440/- as compensation. The Tribunal awarded Rs.10,000/- for pain and sufferings, Rs.5,000/- towards transportation and extra nourishment and damages to articles. The Tribunal awarded Rs.4,480/- towards medical expenses and awarded Rs. 92,920/- as total compensation, which is reasonable.

11. In the above circumstances, it is decided that the order of the Tribunal is hereby modified as follows:-

- (i) the appellant / insurance company is to be exonerated from the liability.
- (ii) the owner of the vehicle-second respondent herein is directed to pay compensation for the claimant.

12. This appeal is allowed. Nosts.

- (i) The quantum of compensation awarded by the Tribunal is hereby confirmed.



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(ii) The second respondent herein- owner of the vehicle, is directed to deposit the entire compensation of Rs.92,920/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

(iv) Since the appellant – Insurance Company is exonerated, the Insurance Company is permitted to get refund of the amount, if any already deposited.

02.12.2022

Index : Yes/No

Internet : Yes/No

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.



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To

- 1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1327 of 2009

02.12.2022