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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.11.2022

Delivered On : 15.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.732 of 2012

The Branch Manager,
Bajaj Allianz General Insurance Co.Ltd.,
K.M.A. Complex, 1st Floor,
Madurai. .. Appellant /2nd Respondent

Vs.

1.Mathi ... 1st Respondent/ Petitioner
2.Sahayaraj ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 09.01.2012, made in M.C.O.P.No.244 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Judge/ Fast Track Court, Pudukkottai.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.R.P.Ramachandran for R1
: Mr.P.Sesubala Raja for R5

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 09.01.2012, made in M.C.O.P.No.244 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Judge/ Fast Track Court, Pudukkottai. 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.244 of 2011, is as follows:

On 03.05.2008, at about 08.00 am., when the petitioner was travelling in a TATA Ace vehicle, bearing Registration No.TN-55-Q-8800, with vegetable load, the driver drove the vehicle in a rash and negligent manner and dashed against the barricade, near Anna Statue in the east main road, at Pudukkottai. The petitioner fell down and he sustained injuries. He was taken to Pudukkottai Government Hospital, after getting first aid, he was admitted in Madurai Meenakshi Mission Hospital and he was getting treatment from 04.05.2008 till 16.05.2008 as inpatient. Subsequently, he took treatment as out patient. He suffered disfigurement of the face. He was not able to lift heavy objects and he is suffering from head ache and giddiness and he is

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unable to continue his business and he claimed a sum of Rs.7,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.244 of 2011, is as follows:

The respondent denied the age, occupation and income of the petitioner. The respondent denied the nature of injuries and medical expenses. The injuries are only simple in nature. The claim under various heads are high. Three persons travelled in the vehicle at the time of accident. The driver has allowed the passengers in a goods vehicle, is violation of policy conditions. The seating capacity is only 2, including the driver. The driver was not having valid driving licence. Since there is violation of policy conditions, this respondent is not liable to pay compensation.

4. 2 witnesses were examined and 14 documents were marked, on the side of the claimant. 2 witnesses were examined and 4 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.1,54,568/- as compensation, to be paid by the respondents.

5. Against the order, the second respondent / appellant has filed this appeal, on the following grounds:-

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The Tribunal ought to have observed that the injured claimant was travelling in a goods vehicle as an unauthorised passenger, Section 147 of M.V.Act, does not contemplate coverage for an unauthorised passenger. The Tribunal failed to consider that the seating capacity of the vehicle is only for 2 persons, including the driver. Travelling on the top of the goods is not permissible. The injured was not the owner of the goods, he travelled only under the category of unauthorised passenger.

6. On the side of the appellant, it is stated that the injured travelled as unauthorised passenger in the vehicle, that too on top of the goods in the cargo area. Even the owner of the goods is entitled only to travel in the cabin and not on the top of the goods.

7. On the side of the first respondent-claimant, it is stated that even if there is violation of any policy condition, the Court can order the appellant to pay the compensation amount and to permit the appellant to recover the same from the owner of the vehicle.

8. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-copy of F.I.R, Ex.P3-copy of M.V.I. report, Ex.P4-copy of charge sheet, Ex.P.5- copy of

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criminal court judgment, the Tribunal fixed the responsibility on the driver of the TATA Ace vehicle, which is reasonable.

9. On the side of the second respondent, it is stated that the insurance was effective at the time of accident. The driver was having valid driving licence. The petitioner travelled only as the owner of the goods and that under Section 147(1) of M.V. Act and under Section 236 of M.V. Rules, the owner of the goods can travel, even in the cargo area of the vehicle.

10. Section 236 of M.V. Rules reads as follows:-

> *"236. Limit of persons in goods carriage.— No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimetre measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."*

11. There is nothing in the M.V. Rules or in the motor vehicle Act, that permit a person in the cargo area of the vehicle. The law is now well settled. There is no liability for the insurance company to pay compensation for an unauthorised

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passenger in a goods vehicle. The owner of the goods is entitled to compensation. Only when he travelled in the cabin and not travelled in the cargo area. Hence, it is decided that the appellant is not liable to pay compensation to the claimant and the appellant is exonerated from the liability.

12. On the side of the first respondent-claimant, it is stated that the first respondent-claimant sustained injuries. P.W.2 has assessed the disability at 35%. The Tribunal has fixed the disability as 25% and that there was 7 fractures and the award is very low and prayed for enhancement of compensation.

13. The first respondent-claimant has not filed any appeal or cross objection. Disability certificate was marked as Ex.P12. X-Ray was marked as Ex.P13. The Tribunal has fixed disability at 25%, which is reasonable. The Tribunal awarded Rs.1,500/- per percentage of disability (Totally Rs.37,500/- for 25%). The Tribunal awarded Rs.10,000/- towards loss of amenities, Rs.10,000/- towards loss of expectation of life, Rs.35,068/- towards medical expenses, Rs.20,000/- towards temporary loss of income, Rs.4,000/- towards transport expenses, Rs.4,000/- towards extra nourishment, which are all reasonable.

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14. The appeal is allowed and the Appellant is exonerated from the charges of the liability. The first respondent herein-claimant is entitled to Rs.1,55,568/- as compensation to be paid by the owner of the vehicle. The second respondent herein -owner of the vehicle is hereby directed to pay the award amount.

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

(ii) The second respondent herein - owner of the vehicle, is directed to deposit the entire compensation of Rs. 1,55,568/- 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. **The appellant – Insurance Company is permitted to withdraw the amount, if any already deposited.**

(iii)On such deposit being made, the first respondent /claimant is permitted to withdraw the entire award amount alongwith interest and costs, on filing of proper petition before the Tribunal. The claimant is not entitled for interest for the default period, if there is any. No costs.

15.12.2022

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R. THARANI, J.

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To

1.The Additional District Judge/ Fast Track Court,
Motor Accident Claims Tribunal,
Pudukkottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.732 of 2012

15.12.2022

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