



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2021

Delivered on : 25.01.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) No.1566 of 2013

THE NEW INDIA ASSURANCE COMPANY LIMITED,
92,EAST COST CHAMBERS,1 FLOOR,
G.N.CHETTY ROAD,T.NAGAR,CHENNAI. BY ITS BRANCH OFFICE
NEW INDIA ASSURANCE COMPANY LIMITED, JEROME BUILDING,
FORT STATION ROAD,TRICHY..

... Appellant/2nd Respondent

-Vs-

1 JEGANATHAN, ... 1st Respondent / Claimant

2 ANNADURAI, ... 2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act, 1988, against the judgment and award made in M.C.O.P.No.786 of 2008, dated 05.11.2012, on the file of the Motor Accident Claims Tribunal - III Additional Sub Court, Tiruchirapalli.

For Appellant	: Mr.D.Sivaraman
For R1	: Mr.N.Sudhagar Nagaraj
For R2	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, made in M.C.O.P.No.786 of 2008, dated 05.11.2012, on the file of the Motor Accident Claims Tribunal - III Additional Sub Court, Tiruchirapalli.

2. The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition.

3. Brief substance of the petition, in M.C.O.P.No.786 of 2008, is as follows:-

On 11.01.2006, at about 09.30 am., the petitioner working as a Cleaner in a Crane bearing Registration No.TN-45-AD-8688, was travelling along the Trichy - Salem National High Way near Thuraiyur, the vehicle was driven by its driver in a very rash and negligent manner and applied sudden brake and the Crane capsized. The petitioner sustained injuries, he was admitted as inpatient in K.M.C. Hospital, Trichy and he took treatment as inpatient from 11.01.2006 till 14.01.2006. The petitioner was having a bullock



cart and he was earning Rs.5,000/- per month. Due to the injuries the petitioner was not able to sit or stand for a long time and he was not in a position to ride the bullock cart. The petitioner claimed a sum of Rs.2,00,000/- as compensation.

4. Brief substance of the counter filed by the second respondent in M.C.O.P.No.786 of 2008, is as follows:-

It is denied that the first respondent is the owner of the vehicle, at the time of accident. The respondent denied that the driver possessed a valid driving licence. It is denied that the petitioner was working as a cleaner in the Crane. The claim under Section 167 of the Motor Vehicles Act is not maintainable. The Seating capacity in a Crane is only for one person, ie. the driver. No premium was ever paid for the Cleaner. The petitioner travelled in the Crane only as a gratuitous passenger. It is wrong to state that the accident took place only due to the rash and negligent driving of the first respondent, while giving way to the vehicle, which came from the opposite direction, unexpectedly, the Crane capsized. The age, occupation, income, injury, mode of treatment and medical expenses are all denied. The disability and the loss of earning capacity are all to be proved.

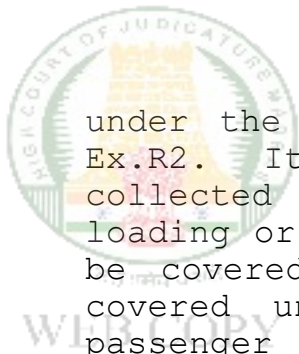
5. On the side of the petitioner, two witnesses were examined and twelve documents were marked. On the side of the respondents, two witnesses were examined and two documents were marked.

6. After considering both sides, the Tribunal has awarded a sum of Rs.1,10,355/- as compensation. Against the same, the second respondent / appellant has preferred this Appeal.

7. On the side of the appellant, it is stated that there is no valid policy coverage and the Tribunal failed to note that the Crane involved in the accident did not have any seating capacity in addition to the driver. R.W.2 has deposed that the seating capacity of the vehicle is '2' which is a factual error. The seating capacity of the vehicle as per the policy is '0'. A premium of Rs.25/- was received for an employee only for a claim under the Workmen Compensation Act and not under the Motor Vehicles Act.

8. On the side of the appellant, it is stated that the seating capacity of the vehicle is one. In Ex.R1, it is clearly stated that the seating capacity is one. R.W.2 is an employee of the second respondent. R.W.1, who is an employee of the R.T.O office, has deposed that as per Ex.R1 the seating capacity is only for one person and except the driver, nobody else is permitted to travel in the vehicle.

9. On the side of the appellant, it is further stated that no premium was paid for a Cleaner. Twenty Five Rupees premium was paid only for one employee under the Workmen Compensation Act and not



under the Motor Vehicles Act. Copy of the policy was marked as Ex.R2. It is further stated that the premium for an employee was collected and the word employee will mean persons who engaged in loading or unloading. Only when the vehicle is stationed they will be covered under the policy, and a gratuitous passenger is not covered under the policy. The claimant is only a gratuitous passenger and he is not entitled to claim any compensation. Judgments of this Court reported in **2012-1-TNMAC-89 (DB) (RoyalSundaram Alliance General Insurance Co.Ltd. V. P.Ayyakannu), 2012-1-TNMAC-545 (Oriental Insurance Co. Ltd., V. Pauldurai) and 2008-2-TNMAC-355 (The Divisional Manager, New India Assurance Company Limited V. Vinayaga Moorthi)** are cited.

10. On the side of the first respondent, it is stated that the seating capacity in the Crane is for two persons.

11. Evidence of R.W1 and Ex.R1 reveals that the seating capacity in the Crane is only for one person. It is seen that nobody is permitted to travel in the vehicle. In the above circumstances, the claimant can be treated only as a gratuitous passenger. It is seen that premium was paid only for one employee that too under the Workmen Compensation Act and not under the Motor Vehicles Act. Hence, the **appellant /New India Assurance Company Limited, is exonerated.** It is seen that the compensation fixed by the Tribunal is reasonable. The award, in M.C.O.P.No.786 of 2008, dated 05.11.2012, on the file of the Motor Accident Claims Tribunal - III Additional Sub Court, Tiruchirapalli, is hereby modified. The compensation fixed is to be paid by the owner of the vehicle.

12. This Civil Miscellaneous Appeal is **allowed.** The second respondent herein/ owner of the vehicle is directed to deposit the entire compensation of Rs.1,10,355/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount. The Claimant is not entitled for interest for the default period, if there is any default. No costs. **The amount, if any, deposited shall be refunded to the appellant / Insurance Company.**

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



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To

1.The Motor Accident Claims Tribunal -
III Additional Sub Court,
Tiruchirapalli.

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

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-2320[F] dated 25/01/2022)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-2866[F] dated
28/01/2022)

C.M.A(MD)No.1566 of 2013
25.01.2022

SVN(CO)
KB(18.02.2022) 4P 6C