BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 30.11.2022

CORAM

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

C.M.A(MD)No.317 of 2013

M/s.The New India Assurance Company Ltd.,
Door No.248, Kamarajar Salai,
Madurai - 625 009.
represented through its
Divisional Manager ...Appellant /Claimant

Vs

1.Meenal (Died) ... 1st Respondent / Petitioner

2.Karthikeyan ... 2nd Respondent / 1st Respondent

3.Poosai @ Subbiah

4.Tamil Selvi

5.Velu

6.Azhagu

7.Panjavarnam

8.Deepakala ... 3 to 8 Respondents

(Respondent Nos.3 to 8 are brought on record
as Legal representatives of the deceased 1st respondent
vide Court order dated 26.07.2021)

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the order and decree dated 05.07.2011 made in M.C.O.P.No.2014 of 2008 on the file of the Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Madurai and to allow the appeal.

For Appellant	: Mr.K.Murugesan
For R3 to R8	: Mr.S.Thirupathy
For R2	: Mr.AN.Ramanathan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.2014 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Madurai. The appellant herein is the second respondent, first respondent herein is the claimant, respondents 3 to 8 are the legal representatives of the deceased first respondent and second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 05.07.2007, at about 2.30 pm., when the petitioner was travelling in a vehicle bearing registration number TN 45 F 5973 as a load woman, the driver of the vehicle drove the vehicle in a rash and negligent manner and the vehicle capsized. The petitioner sustained injuries. She was admitted in Madurai City Hospital and she took treatment as inpatient from 05.07.2007 till 19.07.2007. Then again she took treatment as inpatient from 16.08.2007 till 23.08.2007. The petitioner was working as a coolie and was earning Rs. 3000/- per month. Due to the accident, she sustained disability and could not do her work. She claimed a sum of Rs.4 Lakhs as compensation.

3.Brief substance of the counter filed by the second respondent in the claim petition, is as follows:

The manner of accident is denied. The vehicle insured was a goods carrier. Carrying passengers is in violation of the Motor Vehicles Act. Since the policy conditions were violated, there is no necessity for the second respondent to pay compensation. The driver of the vehicle was not having valid driving licence. The age, income and profession of the petitioner are all denied. The petitioner has to prove the disability and the medical expenses. The claim is excessive.

4.Three(3) witnesses were examined and nine(9) documents were marked on the side of the petitioner. Three(3) witnesses were examined and eleven(11) documents were marked on the side of the respondents. The Tribunal awarded a sum of Rs.3 Lakhs as compensation to be paid by the second respondent.

5.Against the award, the second respondent preferred this appeal on the following grounds:

The Tribunal failed to consider that the insurance company cannot be held liable to pay compensation for gratuitous passengers who travel in a goods carrier. The Tribunal failed to consider that the driver of the vehicle was not having valid driving licence. Only the owner of the vehicle is responsible to pay compensation. The Tribunal, after coming to a conclusion that the owner alone is liable to pay compensation, has directed the appellant to pay compensation and then to recover the same from the owner of the vehicle, which is wrong. The Tribunal ought to have held the liability only on the second respondent herein. The Tribunal has erred in awarding a compensation of Rs.3,00,000/- to the claimant without any basis or evidence. The Tribunal fixed the disability at 60% without any scientific proof.

Awarding Rs.90,000/- towards partial permanent disability is excessive. P.W. 3 assessed the disability at 74%. But failed to see that the fracture of mandible bone would not be in any way deprive the income of the claimant and cause any loss in the earning capacity. The Tribunal awarded Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards extra nourishment, Rs. 10,000/- towards loss of earning capacity and Rs.50,000/- towards loss of continuing disability which are all very high.

6.On the side of the appellant it is stated that 25 persons travelled in a goods carrier to attend a funeral. The Tribunal failed to consider that the vehicle is a goods carrier and passengers are not permitted to travel in the vehicle. On the side of the claimants it is stated that the policy was in force and hence the Tribunal has ordered the compensation to be paid by the appellant and the appellant was permitted to recover the same from the owner of the vehicle.

7.On the side of the second respondent it is stated that there is no serious dispute regarding the cause of the accident. It was the driver of the vehicle who was rash and negligent and the vehicle capsized. Insurance

Policy copy was marked as Ex.R2. In the FIR, it was mentioned that the claimant and others travelled in a goods vehicle to attend a funeral and the accident has occurred when they were returning back. R.W.3 has deposed that the claimant has given a statement that 25 persons travelled in the goods carrier. The claimants and others travelled in a goods carrier as gratuitous passengers.

8.On the side of the appellant it is stated that the driver of the vehicle was not having valid driving licence. A Junior Assistant from the RTO office was examined as R.W.1 and he has deposed that the driver of the vehicle was not having driving licence. Hence it is decided that the driver of the vehicle was not having valid driving licence.

9. On the side of the appellant it is stated that the compensation fixed by the Tribunal is excessive. P.W.3-Doctor was examined. The OP sheet for medical treatment was marked as Ex.P2, Discharge summary was marked as Ex.P3, case history was marked as Ex.P5 and Ex.P6. Disability certificate was marked as Ex.P7 and Ex.P8. X-rays were marked as Ex.P9. P.W.1 and P.W.3 have deposed that the petitioner sustained injury on the right eye. There

were fracture on the right cheek bone and in the forearm. There is malunion of the bone and disfigurement. P.W.3 assessed the disability at 74%. The Tribunal fixed disability at 60% and awarded Rs.90,000/- for the disability.

10.On the side of the respondent Nos.3 to 8, it is stated that when the insurance policy of the vehicle is covering certain number of persons, the liability of the insurer will be confined to those persons, not with standing large number of persons travelling in the vehicle at the time of accident. A judgment of the Hon'ble Supreme Court reported in **AIR 2011 SC Civil 719** in the case of **United India Insurance Co.Ltd., Vs K.M.Poonam and others,** is cited, wherein it is held that,

> *"Insurance Policy of owner covering six occupants of vehicle including driver - Liability of insurer would be confined to six persons only nothwithstanding large number of persons carried in vehicle on date of accident - Liability to pay compensation in respect of their would be that of owner -Excess number of persons would be treated as third parties - However, insurer would be liable to pay compensation in respect of such excess persons at first instance with light to recovery from owner alter."*

11. On the side of the third respondent it is stated that even if the driver of the vehicle was not having valid driving licence, the Court can pass an order for the insurance company to pay the compensation and to recover the same from the owner. A judgment of this Court made in C.M.A(MD)No.295 of 2018 dated 04.01.2022, is cited.

12. On the side of the respondent, another judgment of this Court reported in **2011 (1) TNCJ 89(Mad)** in the case of **United India Insurance Co.Ltd., vs Elancheran and others,** is cited, wherein the insurance company was held not liable to pay compensation but was directed to pay the claim and to recover the same from the owner of the vehicle. The relevant portion is as follows:

> *"---Vehicle meant for goods carrying passengers met with accident - Death of one person and injuries to other - violation of policy condition - Insurance company directed to pay compensation - Held, policy condition was violated hence insurance company not liable to pay compensation but directed to pay but with liberty to recover the same from owner."*

13. The petitioner and others travelled as an unauthorized passengers to attend a funeral. In the above circumstances, the citations placed by the claimants are not applicable to the facts of the present case. Now the law is well settled. The vehicle involved in the accident is a goods carrier and hence, there is no question of pay and recover. Hence it is decided that the insurance company is not liable to pay compensation.

14. By permitting a person who has no driving license to drive the vehicle, the second respondent herein who is the owner of the vehicle, has violated the policy conditions. In the above circumstances, the liability cannot be fastened against the appellant. A verification of records reveals that the quantum of compensation fixed by the tribunal is reasonable. Hence it is decided that the order of the Tribunal has to be modified that the second respondent herein is liable to pay compensation to the claimants.

15.Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.3,00,000/- (Rupees Three Lakhs only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company is exonerated from liabilities. The second respondent herein/ owner of the vehicle, is directed to deposit the entire compensation of Rs.3,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.2014 of 2008, on the file of the learned Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant / insurance company is permitted to withdraw the amount which was already deposited by them.

(iv) On such deposit being made by the second respondent herein/owner of the vehicle, the 3 to 8 respondents /claimants are permitted to withdraw equal share of Rs.50,000/- (Rupees Fifty Thousand only) along with proportionate interest.

30.11.2022

Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Madurai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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