IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.1496 of 2011
and M.P.No.1 of 2011

Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road,
Chennai – 600 104. ...Appellant

vs.

1. Prakash
2. S.Panchatcharam ...Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, to set aside the decree and judgment dated 03.01.2011 made in M.C.O.P.No.10 of 2006 on the file of Motor Accident Claims Tribunal (Additional Sub Court), Chengalpattu and be pleased to dismiss the above claim as against the appellant.

For Appellant	:	Mr. Elveera Ravindran
For Respondents	:	Mr.S.Swaminathan
		R2 – *Ex-parte*

JUDGMENT

This appeal is filed by the Insurance company challenging the award passed in MCOP.No.10 of 2006 dated 03.01.2011 on the file of the Motor Accident Claims Tribunal,(Additional Subordinate Judge's Court), Chengalpattu, whereby the Tribunal has awarded the compensation to the claimant for a sum of Rs.3,64,970/- with interest at the rate of 7.5% from date of numbering of the petition till the date of deposit.

2. For the sake of convenience, the parties are referred to by their rank before the Tribunal.

3. The case of the claimant in brief is as follows:

3(i) On 18.05.2005, at about 14.30 hours, while the petitioner was traveling in a Minidor bearing Registration No.TN 25 W 5785 to load the scraps at Nallur; while the vehicle reached near Muthalur Village, due to the high speed and negligent driving of the driver of the goods vehicle, the goods vehicle capsized, due to which the claimant sustained grevious injuries.

3(ii) For the said incident, FIR has been registered against the driver of the mindior and the claimant has filed a petition for compensation of a sum of Rs.3,00,000/-. The first respondent/owner of the vehicle remained *ex-parte* and has not contested the case.

3(iii) The second respondent/Insurance Company filed counter affidavit and contended that driver of the goods vehicle was not having the valid driving license, the claimant has travelled in the goods vehicle as an unauthorized passenger and hence there is a violation of statutory and contractual Rules. Therefore, the Insurance company is not liable to pay the compensation.

4. On the side of the claimant, to prove the case of the claimant, claimant was examined as P.W.1 and the Doctor was examined as P.W.2 and marked exhibits Ex.P1 to Ex.P9. On the side of the respondents, R.W.1 was examined and Exhibits Ex.R1 and Ex.R2 were marked.

5. Based on the evidence placed on record, the Tribunal held that the driver of the minidor is responsible for the occurrence as he drove the vehicle in a rash and negligent manner and has awarded compensation of Rs.3,64,970/- with interest.

6. Aggrieved over the non-consideration of the contention regarding the violation of policy condition and also the statutory rules, the insurance company filed this appeal challenging the award.

7. The learned counsel appearing for the appellant would submit that there is no evidence placed on record to show that the injured travelled in the goods vehicle as a load man or in any other capacity, which authorizes him to travel in the goods vehicle. The Tribunal has not properly appreciated the evidence of the second respondent Insurance Company to the effect that there is a violation of policy condition as well as the statutory rules. Hence, the appellant prays to set aside the award directing the Insurance Company to pay the compensation to the claimant.

8. *Per contra,* the learned counsel for the first respondent/claimant would submit that the Tribunal after considering the evidence placed on record has rightly come to the conclusion that the claimant has traveled in the vehicle for the purpose of bringing the load. He was doing iron scrap business at Vellore and he has denied that he has traveled in the goods vehicle as an unauthorized passenger. Hence, he prays for confirming the award passed by the Tribunal. He has also relied on judgment of this Court in the case of ***M/s.Oriental Insurance Company Limited through its Divisional Manager, Madurai vs.Nalluchamy and Anr. [CDJ 2015 MHC 3432].***

9. I have considered the above submissions of the learned counsel appearing on either side and also perused the records.

10. The claimant in his evidence as P.W.1 has stated that for the purpose of bringing the iron scrap he traveled in the minidor on 18.05.2005 at about 2.30 p.m, when the vehicle reached near the Muthalur Village, the minidor vehicle capsized and he sustained grievous injuries. In the cross-

examination, he stated that the minidor was driven by one Manimaran, who is the owner of the vehicle. He has not stated that, he has travelled in the vehicle along with goods.

11. On a perusal of FIR, it reveals that, the claimant has not stated anything about the purpose for which he traveled in the vehicle. It is stated that on 18.05.2005, he was traveling from Vanthavasi to Nallur in the Minidor around 2.30 p.m., and when the vehicle reached near Muthalur Village, it capsized and caused injuries to him.

12. Except the evidence of P.W.1, no other corroborative materials has been produced to show that the injured/claimant has travelled as the owner of the goods or in the capacity of load man or any other authorized capacity to show that he is entitled for compensation even though he has traveled in the goods vehicle. Admittedly, he has travelled in the goods vehicle to bring some iron scrap from Mathur Village and travelled only as an unauthorized passenger in goods vehicle. The judgment relied on by the claimant in the case of ***M/s.Oriental Insurance Company Limited Vs.***

Nalluchamy and Ors. reported in ***CDJ 2015 MHC 3432*** would not be applicable to the facts of the case, wherein, this Court has considered the case of the injured person, who was traveled in the goods vehicle after attending the unload work.

13. The Apex Court in the case of ***New India Assurance Co.Ltd., Vs. Asha Rani and Ors.*** reported in ***[MANU/SC/0474/2001] [2001 (6) SCC 724]*** and in the case of ***National Insurance Co.Ltd. Vs. Baljit Kaur*** reported in ***2004 (1) CTC 210.[2004 (2) SCC 1 : 2004(2) SCC 1 : AIR 2004 SC 1340]*** has held that gratuitous passenger traveled in goods vehicle is not eligible for compensation from the Insurance Company.

14. This Court is of the view that the Tribunal has failed to consider this statutory violation as well as the policy conditions. Hence, the finding of the Tribunal, that the Insurance Company has to indemnify the owner of the vehicle and pay the compensation to the claimant is hereby set aside and the second respondent/owner of vehicle is directed to pay the compensation assessed by the Tribunal to the claimant.

15. The second respondent/owner of vehicle is directed to pay the compensation awarded by the Tribunal for a sum of Rs.3,64,970/- to the claimant/first respondent and the appellant/Insurance Company is permitted to withdraw the deposited money, if any by making proper application.

16. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Connected miscellaneous petition is closed.

18.08.2023

Index:yes/no
Internet:yes/no
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To

The Motor Accident Claims Tribunal
(Additional Sub Court), Chengalpattu.

K.RAJASEKAR.J.,

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C.M.A.No.1496 of 2011

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