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C.M.A.No.765 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.765 of 2010

and

M.P.No.1 of 2010

United India Insurance Co.Ltd.,
Gobichettipalayam

Vs.

... Appellant/ 2nd Respondent

1. Sakthivel

...1st Respondent/Petitioner

2. S.P.Shunmugasundaram

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 17.07.2006 made in M.C.O.P.No.80 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Gobichettipalayam.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.Pa.Thangavel [R1]

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the decree dated 17.07.2006 made in M.C.O.P.No.80 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Gobichettipalayam.



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2. It is the case of the appellant that on 03.12.2003, at about 3:00 am, when the first respondent was travelling in a van to shift his household articles, the second respondent who is the driver of the van drove the vehicle in a rash and negligent manner, applied sudden break in order to prevent hitting the dog which crossed the road, leading to the accident, in which the first respondent sustained simple injuries on forehead and cheek. Thereafter, the first respondent filed a claim petition before the Tribunal claiming compensation of Rs.4,00,000/-, however, the Tribunal awarded a sum of Rs.1,95,500/- as compensation. Challenging the same, the present appeal has been filed.

3. The learned counsel for the appellant/Insurance Company submits that as per the policy condition a person travelling as unauthorized passenger is not entitled for any compensation, and in the present case on hand the claimant was travelling as gratuitous passenger. Hence, he is not entitled to be considered as a third party to claim compensation. He further submits that though all those facts were well established before the Tribunal, without considering the same, has passed the said award which is per se unsustainable. Hence, he prayed to allow this appeal.



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4. The learned counsel for the first respondent / claimant submits that due to the rash and negligent driving of the second respondent the vehicle was capsized, thereby the claimant was admitted in the Hospital. Based on the material evidence the Tribunal has passed the said award which need not be interfered with.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials placed on record.

6. Admittedly the claimant was admitted in hospital for a period of 41 days and it is also seen that except the claimant no one sustained injuries. The Tribunal assessed the entire issue and arrived at a conclusion that the first respondent / claimant travelled in the vehicle and subsequently, the said vehicle capsized. Therefore, the injuries were suffered by the claimant in the said accident stands established.



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7. Further, it is to be pointed out that the van is taken on hire and as the owner of the goods, the claimant had accompanied the goods and, therefore, he cannot be said to be a gratuitous passenger and, therefore, rightly, the Tribunal has assessed the claim and had directed the insurance company to pay the compensation. There is no material placed by the appellant/insurance company to hold that the claimant was not the owner of the goods, which were carried in the van. Such being the case, the findings rendered by the Tribunal based on which compensation has been awarded is just and proper and the same need not be interfered with.

8. For the reasons aforesaid, this appeal is dismissed. The appellant insurance company is directed to pay the entire compensation as awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of two (2) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant / first respondent through RTGS within a period of two (2) weeks



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thereafter. There shall be no order as to costs in this appeal. Consequently, the

connected Miscellaneous petition is closed.

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accidents Claims Tribunal, II Additional Sub Court,
Gobichettipalayam
2. The Section Officer, V.R. Section, High Court, Madras.



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